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Vol. III

TRANSCRIPT OF RECORD

(Pages 1037 to 1599)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ET AL., PETITIONERS,

vs.

MT. CLEMENS POTTERY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1945.

CERTIORARI GRANTED OCTOBER 15, 1945.

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

TRANSCRIPT OF RECORD

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

(VOL. III—Index and Pages 1057 to 1583, Inclusive)
(Proceedings in U. S. Circuit Court of Appeals, Sixth Circuit)

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No. .....

United States of America

IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

MT. CLEMENS POTTERY COMPANY,

Appellant,

vs.

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Appellees

Appeal From the District Court of the United States for the Eastern District of Michigan, Southern Division.
Civil Action No. 2582

TRANSCRIPT OF RECORD

(VOL. III—Index and Pages 1057 to 1583, Inclusive)

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Mr. Starner. Now, in giving your estimates of these times, they are given without having held a stop watch on these people to see how quickly they can walk from one place to another?

A. That is right; I wouldn't want to be—

Q. And they are also given with reference to the conditions under which these people have to travel the distance, being through the factory with whatever turns, obstructions and so on there might be in the way, is that right?

A. That is right, yes.

Q. And it is based very largely on the fact that from your observation you know what time they arrive in general in the department, where you have the job of getting them started at an established starting time, is that correct?

A. That is right, yes.

Q. Now, I ask you I believe, about this day; I showed that Mr. Metz, on Exhibit 31, the first Monday on which he was on the morning shift, which shows that he checked out at the clock at 10:31; I think at that time you were being asked whether he had quit work or stopped work before 10:30?

A. You ask me that question now?

Q. Yes.

A. I would say that he had to quit before 10:30, to ring out at 10:31.

Q. And on the same day, on Exhibit 31, it shows that again at noon, the lunch period, that he apparently punched the clock at 10:53; would you say that he started work before 11 o'clock or after 11 o'clock, or when? • • •

A. I don't see how he could get started there before 11 o'clock

Q. What is your best judgment as to that?

A. I would say it would be 11 o'clock or after, before he starts; ring in at 10:53, I would say 11 o'clock or after.

Q. And in each of those cases he couldn't start anyway, until the other two were there in his group?

A. That is right.

Q. And it shows that he rang out on that same Monday, referring to Exhibit 31, at 2:40. What would you say as to whether he worked after 2:30 or not?

A. Well, my—from observation I would say that this man didn't work after 2:30.

Q. As a matter of fact, what is the general practice in the department as to requiring them to stop at the stopping time?

A. We insist on them stopping at 2:30.

The Master: Just to get your testimony clear in each case, when you state he didn't start work until such and such a time, or he didn't stop—or he stopped work at such and such a time, and when you say you insist on them stopping at 2:30, you are referring in each case, stopping production work?

A. That is right.

The Master: Or starting production work?

A. Or starting production work. • • •

The Master: Exhibit 31 you have been testifying to, you stated Mr. Metz came in in the morning on the first Monday on the card at 5:49, and you stated he couldn't have gone to work much before 6:00.

A. That is right.

The Master: And you have also stated Metz, most of the time, was working on these mangles which have this particular operation. When you stated Metz could not have started work much before 6:00, did you have in mind he could not have started his operation as a jigger man before 6:00, or that he could not have started his turning on the heat much before 6:00? • • •

A. I think my testimony before would stand the same even without that operation.

Q. (By Mr. Nunneley) In other words, you mean by that, figuring it either way he couldn't have started before 6 o'clock?

A. That is it exactly. • • •

Q. So that when the employee went back and he started up his tool or machinery that was provided for him to make his ware with, is that correct?

A. That is right.

Q. And part of the starting up operation would be the turning on of the heat?

A. It could be termed as that. • • •

Q. (By Mr. Nunneley) Mr. Starner, were there times when the starting time was changed? In other words, was it always 6 o'clock, or was it varied from time to time?

A. It varied from time to time, sir. It wasn't always 6 o'clock.

Q. What would be the case in the afternoon, as to quitting time?

A. Changing time? They did often—I don't say quite often, but there is times when the starting time in the afternoon was changed, too.

Q. What about the quitting time?

A. The quitting time would be changed.

Q. In that event, your people would be notified ahead of time, would they?

A. That is right. They were always told about that.

Q. Referring to this Exhibit 31, it shows that Mr. Metz punched in at 10:53 on the first Monday that he was on the morning shift. What would you say as to whether or not he started work before 11 o'clock?

A. I don't see how Metz could start before 11 o'clock.

Q. And on the same day and the same Exhibit 31, it shows that he punched out again at 2:40. What time would you say that he ceased work? Was it before 2:30 or after 2:30, or at 2:30 or when?

A. I would say he didn't work any longer than 2:30.

Q. Now, Mr. Starner, in giving estimates of times,

and so on, that you have given here, what observation or means have you or did you have of finding out or knowing what the times were?

A. That is, in coming into the department?

Q. Yes, in coming in.

A. Well, from observation, the time the people come into the department, you could tell about when they rang in. In other words, it is several minutes after the time for the people to ring in that they actually arrive in the department, and I have noticed time cards at different times, looking at them, the time that they rang in and rang out, and judging by the time they arrived and left the department about how much time they consumed between the clock and their departments. That has been my observation. That is the way I am basing my calculations here.

Q. And you also at one time were an actual worker, doing these same operations, is that correct?

A. Yes, sir.

Q. Now, on Tuesday, when Mr. Metz was on the morning shift, it shows he punched in on Exhibit 31 at 5:51, is that correct?

A. That is right, sir.

Q. What is your testimony as to whether he started to work before 6 o'clock on that day?

A. From all observations, I would say that he wouldn't be started before 6 o'clock.

Q. And on the same day, as shown on Exhibit 31, he punched out at 10:30 at lunch time. What time would you say he stopped work on that day?

A. It would be impossible for him to work to 10:30 and ring out at 10:30. I would say he had to quit minutes before 10:30 to get to the time clock at 10:30.

Q. And on that same day, shown on Exhibit 31, Tuesday, on the morning shift, he rang in again after lunch at 10:54. Would you say he got started to work before 11 o'clock on that day?

A. I don't believe Metz could get started at 11 o'clock that day.

Q. From your observation would it be true that he must have started after 11?

A. I believe so.

Q. And on the same day, Tuesday, that he was on the morning shift, shown on Exhibit 31, it shows he rang out at 2:54. Would you say that he worked after 2:45 on that day? * * *

Q. (By Mr. Nunneley) Will you answer the question? Do you recall what the question was?

A. Yes. I don't see how somebody could constantly disobey the rules without our observation; I would say that the man quit at 2:45. * * *

The Master: I would like to ask this question; if Metz punched the time clock at 14 minutes to 6:00 on a given morning, would you say that he could have started work before six o'clock, production work?

A. Well, his starting to work at 6 o'clock would depend upon the other two people of the group; even if he was in there in time enough to start before 6 o'clock himself; so I don't see how he could have ever been timed to be in there at 14 minutes to. In fact, that doesn't happen. They don't do that.

The Master: I don't just see what value we are going to get out of going through all these time clock cards then, because even if he got in at the very earliest time the witness would still say, that is the very earliest time he could go by the time clock, he would still say he didn't start work before six. Your testimony yesterday, I believe, was that as a normal proposition nobody started work before 6 o'clock, when the shift was supposed to start at six, is that right?

A. That is right; I think I testified we would never quibble over a minute or two before 6 o'clock, because we never stood there with a clock in our hands.

The Master: They might start a minute or two before, but not before that?

A. It is possible, if everything synchronized so they could start, then we wouldn't object to it. The starting time was 6 o'clock. I can't say, and I don't think any-

body else can say nobody started before 6 o'clock, unless there was some kind of timing there to show whether they did or not. • • •

Q. (By Mr. Nunneley) Mr. Starner, it was, as I understood you to testify yesterday, it was instructions from the management at foremen's meetings, and was part of your job, to see that the time was kept down to the legal amount, whether 44, 42, or 40, or under. You testified to that yesterday?

A. That is absolutely right.

Q. Now, in your department were there any employees during the period the law was in effect who habitually and continuously worked more than the 40 hours, or 42 hours, or 44, as the case may be, when the law was in effect? • • •

A. The answer to that would be no, absolutely not.

The Master: And, again, by "work" you are defining work as production work, just to get the record clear?

A. That is right.

Mr. Lamb: May the record also show I request the answer of the witness be stricken.

The Master: Yes. I will deny it and let the testimony stand.

Q. (By Mr. Nunneley) Mr. Starner, in cases where people might have occasionally worked over the 40 hours, or 42, or 44, as the case may be, would that show in the records?

A. It certainly would.

Q. Mr. Starner, in this Exhibit 31 I notice there is a time when Mr. Metz punched out at 2:18. What would that indicate? (Handing exhibit to witness.)

A. His time in that case, of course, as computed by the card, would stop at 2:15, but he would actually have quit before that time to be able to ring out at 2:18. Does that answer your question?

Q. Would that mean that he quit, also, at some time before the 2:30?

A. Before the given time to stop.

The Master: Why would he quit at 2:18 if the shift ended at 2:30?

A. Well, there is times when various reasons would come up that a fellow would want to quit in a hurry and he would do that, wanting to go somewhere, he had to be some place at a certain time, and he wanted to stop early that day. There was various reasons why a fellow wanted to quit at 2:15. If the department didn't quit we would give a fellow permission to stop. • • •

Q. You used the expression "changing uniforms." Nobody wears a uniform there, do they, in the ordinary sense of the word?

A. No, not the entire uniform. I really meant their aprons and things like that. I was really referring to the aprons. • • •

Q. (By Mr. Nunneley) Mr. Starner, did you ever see Mr. Lamb before you came into court here yesterday?

A. Never did, sir.

Q. Did you ever have him pointed out or recognize him in any way?

A. Never have, sir.

Q. Did you ever start a suit against the Mt. Clemens Pottery Company, and garnishee the S. S. Kresge Company in Toledo?

A. Absolutely not.

Q. Did you ever authorize anybody to start such a suit for you?

A. No, sir.

Q. If such a suit was started, was it done entirely without your permission or authority, Mr. Starner?

A. Yes, sir, entirely without it.

Q. When did you first learn that there was such a suit?

A. When I first learned that, when I was told by Mr. Doll.

Q. Do you recall somewhere when that was?

A. The exact time, I don't believe I could give you. It has been some time ago.

Mr. Nunneley: Take the witness.

Cross Examination

By Mr. Lamb:

Q. Do I understand that if you are one of the named plaintiffs in an action in a proceeding for those named plaintiffs, instituted in a court down in Toledo, that the authorization and power of attorney and other records signed by the employees in these matters, none of such records would bear your signature, is that correct?

A. I haven't signed no papers or given anyone authority to bring about any suit.

Q. And if there is a signature on an authorization and power of attorney purporting to be your signature, that would not have been applied by yourself, is that correct?

A. That is correct.

Q. Now, I understand, you have been a foreman of the Mt. Clemens Pottery Company clay shop for some 18 years, is that correct?

A. That is right.

Q. During those years, you have had foremen's meetings, usually addressed by Mr. Doll?

A. Yes.

Q. These meetings were held on Tuesday of each week?

A. For quite some time we have had those.

Q. As I understand it, during these years you have usually arrived at the plant and in your shop around 5:30 in the morning, is that correct?

A. I arrived at around 5:30 in the morning if the starting time was 6 o'clock.

Q. I see. Did you determine the evening before from some source as to what the starting time would be for the next day?

A. We always knew ahead of time when the starting time would be.

Q. Did you get that information, Mr. Starner, or did you make that decision? Did you get the information

from someone else or did you make the decision as to what time the employees should come in the next day?

A. Well, it wasn't always just my own decision.

Q. But did you participate in it?

A. Yes, sir.

Q. And then you conveyed that information to the employees, is that correct, the day before, so they would know?

A. That is right.

Q. Is this man, Mr. Fitten, Robert Fitten, an assistant of yours, that is, an assistant foreman in the same shop of which you are foreman?

A. That is right.

Q. That is the Mt. Fitten who testified here yesterday?

A. That is right.

Q. I thought you said yesterday that the dies, and so forth, were turned on or heated by you shortly after you arrived at work at 5:30, for instance, so that the same would be warm and ready for the people when they came to work; is that your testimony?

A. I said they were turned on ahead of time, yes.

Q. Do you oversee that work?

A. I check up to see if it is being done.

Q. Now, if an employee worked until, or, his time clock card shows that he worked until 2:29, that is starting at 6, he worked until 2:29, are you familiar with the time that the company would have paid him to?

Mr. Cooper: An objection to the hypothetical question.

* * *

The Master: What you want to know is, in other words, if the time clock cards show the employee checked out at 2:29 how much time was he credited with.

Mr. Lamb: Okay, I will ask that.

Mr. Nunneley: All right.

The Master: They apparently have no objection to that form, and that seems to get what you want.

So, will you answer that question; if an employee checks out at 2:29, how much time is he credited with?

• • •

A. The time would be computed to 2:15, if he rang out at 2:29.

Q. (By Mr. Lamb) That is right. And if he rang in at 5:46, from what time would the company compute his time?

A. His hours, you mean?

Q. Yes.

A. 6 o'clock.

Q. That is, if he had checked in at 5:46, they would compute his time from 6 o'clock, is that your testimony?

A. That is right.

Q. Now, I am not too certain on your direct examination that you said that the pails, scrapers and sponges were all charged to the jigger man, or that some of those articles may have been charged to finishers. What is your testimony about that?

A. The jigger man pays for those supplies.

Q. And I think you said that that had been the practice until recently?

A. That has always been the practice, that these charges be to the jigger men until during this period of time.

Mr. Nunneley: The period of time involved in the suit?

A. The period of time involved?

Q. Has the practice continued since the filing of the suit?

A. Do I have to answer that?

The Master: Yes, answer it. There has been no objection.

Mr. Cooper: If the witness knows.

The Master: If you know. Of course, obviously, if you don't know, you can't testify.

A. Why, not altogether. I should say that it is the same.

The Master: I beg your pardon?

A. The charges are not made exactly the same as they were before.

The Master: How are they made now, if you know?

A. Well, if you mean each individual's supply?

Mr. Nunneley: What difference does it make, since the suit started, if they made a change in the method of charging?

The Master: I will find out out of curiosity, if nothing else, what they do now. It may have some slight bearing.

A. You mean in regards to all these supplies, or certain supplies?

The Master: In regards to the supplies you mentioned, the pails, sponges, scrappers and scrapers? No. The scrappers you don't have to worry about.

A. No charge on scrappers.

The Master: The scrapers, pails, and sponges.

A. The scrapers and pails would be the jigger man's property. The sponges are at the present time—that is what you mean—by the finishers.

Q. (By Mr. Lamb) Paid by the finisher?

A. That is right.

Q. And not by the jigger man?

A. That is right.

Q. Now, you said that the sponge is charged to the employee on an average of about 35 cents apiece. Do you have any notion of how much that sponge costs the company?

Mr. Cooper: Object on the question of materiality, your Honor.

Mr. Lamb: It is highly material.

The Master: Well, it is raised in the pleadings, and I will let you argue that in the briefs. I will take the testimony without ruling on the effect to be given to it.

A. Did I say that all the sponges cost 35 cents?

Mr. Lamb: No. You said that they averaged 35 cents.

The Master: You, at least, put some average on it.

Mr. Lamb: Some as low as 16 cents?

A. That is right. I didn't say they were paying over 35 cents, though, did I?

Q. (By Mr. Lamb) No. I don't want to mis-state your direct testimony. I simply want—calling your attention to sponges that are charged to the employees at the rate of 35 cents, let us put it that way—

A. Yes.

Q. —Do you have any notion of what that sponge costs the company?

A. I am pretty much impressed by the people who come there with the sponges, that the sponges are costing the pottery most all the time more than actually what they are charging, and it might be when sponges were easier to get in times past, and some time back, that they might have been issuing them out at the same price, but I am sure most of the time, if there is any difference, the people are getting them for less.

Mr. Lamb: I want to get not your impression, but—

Mr. Nunneley: You asked him.

Mr. Lamb: I am asking you whether you have any knowledge of the amount that the sponge, which is sold to the employee, or charged the employee for 35 cents, how much that sponge costs the company?

The Master: Do you know how much that sponge costs?

A. I would say I wouldn't know about that.

Q. (By Mr. Lamb) I see. You don't have knowledge that that sponge costs less than 20 cents to the company?

A. Not that I can verify.

Q. I see. Did you hear Mr. Doll testify about the policy of mark-up on products sold and charged to the employees?

A. I did not.

Q. Calling your attention to cards which have been produced for Delbert Phillips, was Delbert Phillips an employee in the clay shop?

A. That is right. • • •

The Master: It will be Exhibit 74, with a letter that will be given to it later.

Q. (By Mr. Lamb) I note on that Thursday, the first Thursday marked on that card, that Delbert Phillips reported in at 6:48, out at 12 o'clock, reported in at noon at 12:22 and out at night at 4:39. Will you tell us your computation under the company's instructions, and method of computation of the amount of time that Delbert Phillips worked on that day? Would you like a paper and pencil? * * *

A. I would say 9 hours.

Q. All right. Now, on the following day, which is Friday, on the time card for the period ending August 27, 1940, Mr. Phillips checked in in the morning at 6:53, out at 11:34, in at noon at 12:36 and out at night at 4:22. Will you, under the company's method of computation, advise us the time worked by Mr. Phillips? * * *

A. According to that it would be 8 hours. * * *

Q. And on the following day, Saturday, the employee checked in at 6:15 and out at 10:55, is that correct?

A. That is right.

Q. And the computation that you make for the time he worked on that day?

A. It would be 4½ hours.

Q. From 6:15 to 10:55 is 4½ hours, the way you compute his time, is that correct?

A. Yes, sir.

Q. And that is what the company has computed his time for, is that correct? * * *

A. Yes, sir. * * *

Q. That is right. Now, let's go down one more and skip Monday and take Tuesday. Mr. Delbert Phillips reported in at 7:47, is that correct?

A. That is correct.

Q. And out at 10:12, is that correct?

A. That is right.

Q. And you have given him credit for how much time worked?

A. We have given him credit for 2 hours, as I can see there.

Q. There are a great many written notations around that card. Are you able to advise us what those indicate?

A. No, I don't believe I could, sir.

Q. I was asking you whether you knew, if you can, tell us that you saw Mr. Delbert Phillips on that Saturday morning, which is indicated by Exhibit 74-U?

A. You asked me if I saw him?

Q. Yes.

A. I couldn't say whether I did or didn't.

Q. Now, you have testified about some employees getting to work and punching the time clock and sometimes talking about hunting or gossiping some place along that line. Did you mean to imply that you saw Delbert Phillips do any of those things on that Saturday morning?

A. May I explain there? I say I didn't see Delbert Phillips on this particular Saturday morning, because the card indicates that he worked some other kind of work the day before, which might have told him then to report at the same job the next day. I am not sure. • • •

Q. Now, you said something about employees having strolled to their work from the time clock to their bench. Did you see Delbert Phillips strolling that day or did you see him running, or just what was he doing on that day? How was he conducting himself between the time clock and his work?

A. On what day, sir?

Q. On the Saturday indicated by Exhibit 74-U?

The Master: He says he was in some other department that day. Perhaps you could pick out some day on which he was in this department.

Q. (By Mr. Lamb) There isn't any question that he was in your department on the period ending September 10, 1940, on Wednesday, the first Wednesday marked on that card, is there?

A. That is right.

Q. Being Exhibit 74-W?

A. That is right.

Q. Tell me how he conducted himself between the time

clock and his working activities that day. Did he run or did he stroll? Going in, I mean.

A. I don't think I could tell you that, your Honor, because I wouldn't remember what particular day, as to whether he did that particular day or not.

Q. And would you have any knowledge of the time worked except by looking at the time cards?

Mr. Cooper: Objection, if your Honor please, to the form of the question, which assumes that a look at the time cards would indicate the hours worked.

Mr. Lamb: This is cross examination, and I am asking him if he would have any knowledge of the time worked without looking—

The Master: I think it is proper. I will take the answer. • • •

A. Except from the time clock card, I don't see how I could, because I couldn't remember unless I go back and checked the amount of ware that he produced that particular day, and had that to verify the fact he worked on that day, but I haven't got those records here in my hand.

Q. (By Mr. Lamb) That is right. Now, supposing—can you tell us how much time he worked on any day, except by looking at the time clock cards?

A. From this standpoint here? From here?

The Master: Yes, right now. Can you tell right on the stand if any particular day were picked, could you tell how much time he worked without looking at the time clock cards?

A. Not from here I couldn't, no.

Q. (By Mr. Lamb) Well, even if you had some production records they wouldn't indicate the hours he worked, would they? In other words, some days he might produce more if the material were there?

A. That is right.

Q. And the position, and so forth, and other days he would produce less in the same amount of time?

A. That is right.

Q. So, I understand it, it would be your testimony that only by looking at the time clock cards can you tell how much time any employee in your department worked, is that correct?

A. After the day has gone by sometimes—now, you are referring back there for quite some time.

Q. That is right, I am referring to the period—

A. At this late date that would be the only way I can recall, because I couldn't remember.

• • •

Q. That is the purpose of keeping time cards, isn't it?

• • •

A. I wouldn't know, to be sure, if that is what the company keeps time cards for.

Q. (By Mr. Lamb) As I understand it, your testimony on the practices of the employees applies to those employees in the clay shop department only?

A. That is right, sir.

Q. That is correct, is it not?

A. That is right.

Q. And do you have anything to do with making computation of the time worked by the employees in the clay shop?

A. So far as the cards are concerned?

Q. Yes.

A. I have nothing to do with that.

Q. That is done by some person in the office, I suppose?

A. That is right. • • •

(Time cards of Wells Clay were thereupon marked, respectively, Exhibits 75, 75-A to 75-Z, and 75-AA to 75-LL, inclusive.) • • •

Q. (By Mr. Lamb) Now, I assume that what you said in reference to Delbert Phillips is equally true as to the employee Wells Clay, particularly with reference to not being able to advise the particular approach of any employee on any particular day between the time clock and the place of his bench, is that correct? • • •

The Master: That is, you don't know on any particu-

lar day, any given day, how a particular employee approached from the time clock, from punching in the time clock, to the place where he started his production work, for this period from 1938 to 1941?

A. Except as by indicating on the time card, I should think it would be the same on both cards.

The Master: Well, you don't know whether Wells Clay, or any other employee in the department, on any given day during this period stopped at any point to talk with any other work man, or just what they said on any given morning, or how fast they walked from punching the time clock to the place where they started their production work in your department, do you?

A. As right to the exact time, within the minute; I possibly couldn't tell, no.

Q. (By Mr. Lamb) Well, within five minutes, how can you tell?

A. Well, I am there in the department, I can tell what is the practice.

Q. I am asking you whether you can tell us on any particular day as to any particular employee, how quickly or slowly the employee went between the time clock and the bench?

A. Well, if he rings in at 7 minutes before the time to start, I could say I know he couldn't get started at work before the hour.

Q. Well, I am asking you whether, irrespective of time clock cards, or anything else, can you tell us how rapidly an employee, a particular employee, went to or from the time clock to his bench on any particular day?

A. As to how fast he went from the time clock to his department, I couldn't tell on any particular day, no.

Q. Or for any particular employee?

A. Any particular employee; he might have run; I didn't see him, or something like that, if that is what you mean.

The Master: If you did see him, you have undoubtedly forgotten by now how he acted on one particular day?

A. Yes, that is about it.

Q. (By Mr. Lamb): Taking the cards of Wells Clay, Exhibit 75-I, he checks his time clock card in usually at 5:51, does he not? • • •

A. There is three out of five he checks in at 5:51.

Q. (By Mr. Lamb) Yes, and that is true between 5:51 and we will say 5:55 on his other cards, is it not, 75-J, Exhibit 75-K, Exhibit 75-L.

The Master: Do you want to know whether on all of these cards in the morning he checks in between 5:51 and 5:55 when he comes in in the morning, rather than the afternoon shift?

Mr. Lamb: That is right.

The Master: Go through the cards.

A. (Referring to cards) You say from 5:51, here is one he checks in—

The Master: 5:51 to 5:55.

A. That is right, on that card. That is not true there (indicating).

The Master: On Exhibit 75-K he checked in one day at 6:08.

A. That is right.

Q. (By Mr. Lamb) And the other days—

The Master: The other days he checked in within the time limits indicated.

Q. (By Mr. Lamb) 75-L.

A. Between 5:51 and 5:55—5:52.

Q. 5:52.

A. Yes.

The Master: You asked 5:51 to 5:55, he can give the blanket answer for all of them on that basis.

A. That is true also for 75-M.

The Master: It is also true of 75-N.

A. That is right.

Q. (By Mr. Lamb) Then on Exhibit 75-O appear the first two days, that is Monday and Tuesday, he appears at 6:18, does he not?

A. That is right.

Q. And on Exhibit 75-V, on Monday, Tuesday, Wednesday and Thursday, at 6:18, from 6:18 to 6:21, is that correct?

A. For those four days.

Q. Yes.

A. For those four days, that is right.

Q. And all of the days on Exhibit 75-Q he appears at 6:18, does he not.

The Master: No, 6:18—

Mr. Lamb: From 6:18 to 6:22.

A. That is right.

Q. Did you advise him before those days, which we have had reference to to appear at 6:18 rather than 5:50? Did you tell him of a different starting time, that he should have a different starting time?

A. Starting regularly, that would indicate that he had been told.

Q. By you?

A. By me.

Q. What?

A. That is the starting time would be—

Q. As indicated by the time cards?

A. Yes, as indicated by the time clock cards.

Q. What about—

Mr. Nunneley (Interposing) What do you mean, "The starting time as indicated by the cards"? What starting time is indicated by the cards?

Mr. Lamb: I am referring to Exhibit 75 and the letters which we have used in the questions.

Q. (By Mr. Lamb) You understand which time clock cards I was referring to, Exhibit 75, Clay Wells?

Mr. Nunneley: Which one is that?

Q. (Continuing) And the time of 6:15 and 5:50—

The Master: I think it is clear on the record, and some of those you indicated on the record and gave the number and letter, he started coming at around 6:18 to 6:20, 6:22; you say he was told before that, that the starting time was changed?

A. The starting time was changed. It wasn't starting at 6 o'clock at this particular time, no.

The Master: What was he told?

A. As would indicate there, probably would be proved by other cards in the same department in the same period.

Q. (By Mr. Lamb) Other employees in the department?

A. Probably would be indicated by them.

Q. I don't think I asked you, Mr. Starner, to advise us or explain to us what you meant by these employees changing any garments after they left the time clock and began the physical operation of their job. Did you mean to say that they took off their coats and hats and hung them up some place?

A. I did not mention coats and hats.

Q. Coats and hats and so forth were put in the cloak room before they punched the time clock, isn't that correct?

A. Yes, sir.

Q. Do your activities only cover the clay shop, or are there any other departments that you have any active management of?

A. Clay shop only. • • •

Q. Do you know of any employees working over the statutory period of 40 hours?

A. Have they ever worked over the statutory period?

Q. Yes.

A. Yes.

Q. On the company's computation?

A. They have worked over 40 hours, I believe.

Q. And over 42 hours when that was the statutory period?

A. There have been cases where they have.

Q. Do you know of any particular employees who worked more than the statutory period in any particular week without referring to the time clock cards?

A. I can't say that I do.

Mr. Lamb: I think that is all. • • •

Re-Direct Examination

By Mr. Nunneley:

Q. Mr. Starner, you said that you couldn't tell from memory without any reference to any records or anything how long any person worked on any given day, is that correct?

A. That is right.

Q. By referring to these cards can you tell whether the party worked before, or at, or after, the established starting time and stopping times, and so on, from your experience?

A. I can, sir.

Q. That is based on what?

A. My experience and knowledge of the keeping of the time on the cards.

Q. I will show you Exhibit 75-O, being the time clock card for Wells, Clay, for the pay ending June 4, 1940, and call your attention to the fact that on the Monday and Tuesday of the morning shift that is on the card it shows that that man checked in at 6:18 (handing exhibit to witness)?

A. Yes, sir.

Q. What would you say was the starting time for him that morning or those two mornings? • • •

A. I think I can say that his starting time there at that particular time he rang in would be 6:30.

Q. And, I will show you Exhibit 75-P, being the time clock card of Wells Clay for the period ending June 18th, 1940. I call your attention to the fact that it indicates that on Monday of the morning shift week he checked in at 6:18, and Tuesday at 6:21, and Wednesday at 6:19, Thursday at 6:18. What would you say was his starting time for those days? (Handing exhibit to witness).

A. The starting time were those days mentioned would be 6:30.

Q. And when you stated that you could tell from the

time clock card what the starting time was, is that what you meant, that you could interpret that as the starting time in that way?

A. Could interpret that; that is exactly right.

Mr. Nunneley: That is all.

Re-Cross Examination

By Mr. Lamb:

Q. As I understand it, you say that the starting time on Exhibit 74-R, the stopping time on Tuesday which appears as 7 o'clock, what time would you say that he actually stopped production work on that day, on that particular day?

A. You mean here?

Q. Delbert Phillips, Exhibit 74-R, on the first Tuesday it appears there that he reports in at 2:41 and stops at 7 o'clock. What time would you say that he actually stopped production work on the line that he was doing, actual physical stoppage of his job?

A. It would be seven minutes before 7 o'clock because he couldn't possibly ring out before the same time he would stop production.

Q. How many minutes before? You got the exhibit right in front of you now. Tell us when he stopped the physical job that—physical work on the job he was performing.

A. It could have been seven minutes; it could have been ten minutes.

Q. And do you know when the company computed his time as the time he stopped?

A. 7 o'clock.

Q. 7?

A. That is right.

Q. Do you want to compute that time and tell us how many hours he worked on that day? I will read into the record the fact he reported in at 2:31, out at 7, back from lunch at 7:23, and out at 10:11. The company computed

it from 7 o'clock, and you compute the time that the company gave him credit for?

A. 6¾ hours as per on the card.

Q. The company has given him credit for 6¾ hours on that day?

A. That is right.

Q. Now, what time did he report in on the physical job that was assigned to him on that morning if he reported in at 2:31? What time did he get on the physical act of performing the production work?

A. 2:45.

Q. 2:45. You mean that it took him 14 minutes that day to go from the time clock to the physical job to which he was assigned?

A. You said time completed, time he actually started production on that day, didn't you?

Q. Yes.

A. Did I misunderstand you?

Q. I am asking you what time he went to the physical job of production when he reported in on that morning at 2:31?

A. You mean what time he arrived at the job?

Q. Yes.

A. At the bench?

Q. Yes.

A. Well, he could have arrived there at 2:36, 2:37.

Q You say that he worked on that particular day before 2:45 on production?

A. I would say he didn't.

Q. You will say he didn't. Will you tell us what he did in that 14 minutes that qualifies you to say he didn't start work immediately after arrival at the job, tell us what he did that qualifies yourself to say he didn't do the work?

A. Well, before he can go to work on that particular job he has first got to get ready to go to work.

Q. To-wit? What did he do between 2:31 that day on Tuesday for the period ending July 13, 1940, being Exhibit 74-R, tell us what he did on that day?

A. I can't tell exactly all that he did, but I know—

Q. (Interposing) Can you tell us he did anything?

A. He would have to do—

Q. (Interposing) Tell us what he did between what you say is 2:36 and 2:45, tell us what he did that day.

A. Well, he—

Q. (Interposing) Not what he may have done, you have said he didn't go to work that day, I am asking you what he did.

A. He would have to take off his shirt and put on his apron.

Q. Did you see him take off his shirt and put on his apron that day?

A. Well, I never seen him work without an apron.

Q. Did you see him put on a shirt that day—

The Master: Take off a shirt you mean?

Q. (By Mr. Lamb) Or take off a shirt, whatever you are ascribing to it, did you see him do that? What color shirt did he have on?

The Master: Let him answer this first.

A. I couldn't say I seen him take off a shirt, but it is the practice to take off his shirt.

Q. I am asking you a specific question now, Mr. Starner, what he did between 2:31 and 2:45 that day; he didn't go to work until 2:45, what was he doing after he punched that time clock card and you say it took him possibly up to 2:36 to get to his bench on the job; what did he do between 2:36 and 2:45 that day?

A. He wouldn't work without an apron, he would have to put the apron on, wouldn't he?

Q. What did he do that day?

A. Before he starts to work, is that?

Q. That is right, before you gave him credit for starting work?

A. Puts on his apron, takes off his shirt, gets his tools ready to go to work, the scrappers, has to turn—

Q. (Interposing) You saw him do all that?

The Master: Just a minute, let him answer the question first.

A. He has to turn on his mangle and get his heat, and then he has to make sure he has a crew to work with before he can go to work.

Q. (By Mr. Lamb) All of that took exactly 14 minutes, is that correct that day?

A. I couldn't say—

Q. (Interposing) Between 2:31 and 2:45, it took exactly 14 minutes, is that correct?

Mr. Nunneley: Let the witness answer.

The Master: Let him answer.

A. I couldn't say it took him exactly 14 minutes.

Q. Aren't you saying he started to work at 2:45, isn't that your testimony?

Mr. Cooper: He said "not before."

A. I said "not before 2:45."

Q. (By Mr. Lamb) O. K., so it took him 14 minutes that day to go from the time clock card, go through all these operations that you say of putting on a shirt and taking off a shirt, or walking from the time clock over to his bench, that took him 14 minutes, is that correct?

The Master: In the operations he has enumerated, in other words?

Mr. Lamb: Yes, is that correct?

A. Well, you are pinning me down right to the minute. I have stated before that he could have started half a minute before, and I wouldn't question that.

Q. (By Mr. Lamb) Oh, half a minute.

A. He could have.

Q. These operations took between 13½ minutes and 14 minutes, is that correct?

A. Well, this operation would take—by my own experience, if I bring in—

Q. (Interposing) I am asking you now this particular day.

A. I will tell you exactly how they do that, ring in, say—

Q. (By Mr. Lamb) This day?

A. All right.

Q. We are talking about Tuesday, the first Tuesday listed on the card of 74-R?

The Master: It is obvious he doesn't recollect exactly what happened on that day.

Mr. Lamb: If he will say he doesn't recollect, O. K.

Mr. Nunneley: The witness has repeatedly said he couldn't tell you what happened that day.

The Master: He says he can only tell from his general experience what he did.

Q. (By Mr. Lamb) Didn't you say he started work at 2:45 that day?

A. I said that.

Q. I thought you did. Now, the day before he started work, or he punched the time clock at 2:35, and what time did the company give him credit for working, reporting in to work that morning, 2:45 again?

A. 2:45.

Q. Now, do you know anything that he didn't do on the day that he was credited with working at 2:45 on Monday that he did on Tuesday that took him the extra 4 minutes?

The Master: You mean based on actual recollection?

Mr. Lamb: Of course.

The Master: Or based upon inference from his experience?

Mr. Lamb: Or based on the cards.

A. I am interpreting the card by my own observation. I can't say I seen him do anything that particular morning.

Q. Can you tell me whether there was anything distinguished the Monday from the Tuesday when he reported in at 2:35 on Monday and 2:31 on Tuesday, that you should have given him a starting time as of the following quarter hour each day? Was there any physical act that he didn't do one day that he did on the other?

The Master: I think you will have to state whether you mean based on actual recollection or whether you mean based upon observation and general experience?

Mr. Lamb: Let him answer it any way he can.

The Master: O. K., then.

Mr. Lamb: What this particular employee did is what the question is, and not what he may have done in his experience twenty years ago.

The Master: In other words, what you want to know is if he has any actual, definite recollection what that employee did on the afternoon he started to work or punched in at 2:31, that he didn't do when he punched in at 2:35, and not based upon an inference from experience. Do you have any definite recollection, sitting on the stand there, what he did or didn't do that day?

A. I have no recollection of that, no.

Q. (By Mr. Lamb) Can I ask you, Mr. Starner, whether you are able to advise us that, irrespective of which end of your department an employee is in or irrespective of the bench to which he might be assigned or its location, or irrespective of what hour of the day he comes in, whether that employee is not credited on the company's computation, as a company policy, with having worked from the succeeding quarter hour period? Do I correctly state the company policy?

The Master: Read the question back.

A. I don't know if I have got that all clear.

(Question read.)

A. We couldn't constantly tell the people who computes the time on these cards that a fellow is working at the one end of the department or the other and compute them accordingly. There has to be a general computation of these cards.

Q. (By Mr. Lamb) Now can you answer the question? What is the company's policy with respect to crediting people with time worked from the subsequent quarter hour period? Isn't that the company policy?

A. If I understand the question correctly, it is.

Q. And isn't it a company policy that when a man checks out, that he is credited with having worked from the preceding quarter hour?

The Master: Or to the preceding quarter hour.

Mr. Lamb: Yes, to the preceding quarter hour.

A. To the preceding quarter hour, that is right.

Q. That is true irrespective of the distance from a time clock or irrespective of the bench location on which an employee might be working, or irrespective of any other factor? When an employee reports in, he is paid and his time is computed to the succeeding quarter hour, and when he checks out his time is computed from the succeeding quarter hour.

The Master: I think you have the "from" and "to" turned around.

A. Yes, turned around.

The Master: You mean his time is computed from the succeeding quarter hour when he checks in, and to the preceding quarter hour when he checks out?

A. That is right.

Mr. Lamb: Yes, that is right.

Q. Is that correct?

A. That is correct.

Q. That is the company policy?

A. That is right.

Q. Irrespective of whether the employee is located?

A. And that is applying to the employees in our department we are speaking of.

Q. You are speaking of the employees—in all your testimony, you want it to apply only to the employees in the clay shop?

A. Only the employees over which I have direct supervision.

Mr. Lamb: O. K., that is all.

Re-Direct Examination

By Mr. Nunneley:

Q. And likewise that is a policy irrespective of whether he actually starts to work on that succeeding quarter hour or not?

A. That is right. He may not get started.

Q. And likewise his stopping time, if he actually stopped before, if he doesn't punch out until after a cer-

tain quarter hour, he is credited to it in figuring the time?

A. That is exactly so.

The Master: You have some hourly workers in your department over there, I believe?

Q. (By Mr. Nunneley) Are there any hourly workers in your department?

The Master: Employees that work on a straight hourly basis.

A. We don't—

The Master (Interposing) Or I think Mr. Fittons said so yesterday.

Mr. Nunneley: Men who run the machines.

A. The fellows running the machines, yes, they are hourly workers; fellows running the automatic machines.

The Master: Do you see to it that they work right up to the last minute that the shift goes in?

A. Do I see to it that they do?

The Master: Yes.

A. Quite often we stop as much as ten minutes before the time allotted for us to quit.

Re-Cross Examination

By Mr. Lamb:

Q. Do you know the names or number of hourly employees in your department? • • •

A. I couldn't from that period give you the names, no.

Q. (By Mr. Lamb) Of any of them for 1941?

A. I don't believe I could.

Q. For 1940?

A. I couldn't absolutely give you the names of them.

Q. Have they changed, you mean? • • •

A. We haven't had the same fellows on that machine all the time.

The Master: Have you changed all of the men so that none of the men working in April, 1941, are now working on the machine, if you can recall?

A. It seems to me we have changed them all. • • •

Mr. Cooper: Your Honor will recall that our cross-examination of Mr. Charles E. Doll, Sr., was suspended at the earlier hearings until such time as the plaintiff rested their case, and we would like to recall Mr. Charles E. Doll, Sr., at this time for the purpose of cross-examination.

CHARLES E. DOLL, was thereupon recalled as a witness, and having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Cooper:

Q. You are the general-manager of the Mt. Clemens Pottery Company, I believe, Mr. Doll?

A. I am.

Q. How long have you had that capacity?

Mr. Lamb: Do I understand that you say you are calling him for cross-examination?

Mr. Cooper: Yes.

Mr. Lamb: I make an objection to it being cross-examination. • • •

The Master: I don't think I will rule on it until such time as a leading question is asked which would be objectionable, and if it gets to be an issue then I will decide it at that time, but I won't decide it at the present time because I don't know whether there will be any occasion to decide the question.

Q. (By Mr. Cooper) How long have you been general-manager of the Mt. Clemens Pottery Company, Mr. Doll?

A. 28 years.

Q. You have been general-manager ever since the organization of that company?

A. Yes, sir, I built the original plant and have had complete charge of it ever since.

Q. Do your spend a considerable amount of time out in the plant?

A. More of my time is spent on the plant than it is in the office.

Q. And are you familiar with the various departments of the plant, and what operations are performed in each department?

A. I am.

Q. I would like to request you, sir, with reference to Exhibit 30-A, to explain to the court the various departments involved in the plant, and what is done in each department?

A. Exhibit 30-A is a ground plan of the plant. It shows on the south side a railroad siding over which our raw materials come in in loaded cars and are placed at the section of the plant specified as "Clay Bins." The materials are not all clays, but nevertheless for general purpose the storing area of these raw materials is designated as the "Clay Bins."

At this particular point the materials are made up in pre-determined composition, fed into the plunger mills in the slip house where they are mixed with water, and after varying processes in the slip house they are pumped through the filter presses into a plastic form.

These plastic forms are afterwards further processed through pug mills which places the mixture in a putty-like condition to enable it to be formed on the molds.

This clay is then transported to the various clay-forming machines, some of which are—

Q. (Interposing) Excuse me, Mr. Doll. I would like to ask whether or not the operations you have described up to this point are all performed in what is referred to as the slip house or slip department?

A. They are. When the clay leaves the slip department it is in the form to be used in applying it and forming it on the molds. It goes then to the section of the plant generally designated as "clay shop." and in that area it is used on what we generally designate still at this time as hand-operated jiggers. They are really power machines, but they are operated by a crew of three people,

consisting of a jigger man, batter-out and finisher. The jigger man—the batter-out, rather, forms, places the clay on the mold, passes it to the jigger man who in turn jiggers it or revolves it in a machine under a tool which forms a piece of ware by the face of the mold forming the face of the article and the tool under which it is revolving shaping the back.

It then passes through the mangle which is simply a series of shelves operated on chain conveyors which pass through the mangle, circulating among steam coils, or in other sections circulating through a hot-air duct, the intent being that when the product reaches the other end of the mangle it is sufficiently dried and hardened to be lifted from the mold by the finisher without being distorted. It is then the finisher's job to smooth off the rough edges and sponge off the face of the ware, remove any slight imperfections that may have occurred in the processing.

Q. Could you tell me, Mr. Doll, about how long that, or those operations that you have described, consumes?

A. It will take, according to the size and the shape of the article, from an hour to an hour and a half in going through under the machines. We have at other places very large units which we call automatic jiggering machines, in which these same operations are done automatically by these machines. This is a later development, and at the present time the plant is operating under some of both processes.

In the large machines the principles involved are exactly the same, although the operations are automatically done, except in the case I just described, by being performed by hand labor.

After this ware has gone through the finishing process it is then ready to be taken to the loading stations to be put into saggers and loaded on the cars for the first burning.

Q. Is that at the point on the exhibit indicated "bisque car loading?"

A. No, it is taken to the section marked "bisque car

filling." At that point the ware is taken from the trucks, put into saggers, and circulates then on these saggers—the saggers circulate on belt conveyors to the bisque car-loading position where the saggers are stacked onto cars preparatory to going into the kiln for the first burning.

Q. Is that what is referred to as bisque belt system, or isn't there such a thing?

A. Generally speaking, the bisque sagger filling and the bisque car loading and unloading is the bisque car system.

Q. Is that separate from the glost belt system?

A. That is an entirely separate installation and in a separate part of the plant. In the west end of the plant there is also the section known as mold room devoted to the making of the plaster paris-molds on which the ware is formed in the clay department.

These molds are constantly wearing out and deteriorating and have to be replaced at frequent intervals.

Also in the west end of the clay department there is the casting department. That is a department in which we manufacture such articles as cream pitchers, sugar bowls, and items of that type, wherein the ware is formed in plaster molds, but the material is put into the molds in a liquid state, is poured into these hollow molds in a liquid state, and is allowed to stand a certain length of time during which period the solid material—the liquid material next to the mold hardens through the plastic mold putting the water out of the clay and solidifies there so that after it is hardened to the pre-determined thickness the mold is inverted, the surplus material is poured outside and the article is allowed to further dry in the mold before being taken out, and finally when it is taken out it has to be finished by finishers in that department who, in turn, finish the edges and smooth up any defects. After the wear has been loaded on the bisque cars it goes to the west end of the bisque kilns, which is the entrance end of the bisque kilns or the charging end as we designate it.

Q. Mr. Doll, is the term "bisque" applicable to the ware from the moment it leaves the clay shop, or doesn't

it reach the bisque stage until after it has been through the kiln?

A. It is not technically bisque ware until it has gone through the burning stage. However, they are known as the bisque kilns because that is the name of the product as it leaves the kilns, simply a designation of the first burning. The cars are put in at intervals through these kilns. The speeds can be controlled, but of course you don't keep changing all the time. That involves quite some firing problems, but they can be run at varying speeds over periods of time.

Q. Approximately how much time is consumed in putting car of ware through the bisque kiln?

A. Well, average time in going through the bisque kiln in the average production would represent about 48 hours from the time the car enters the kiln until it comes out.

The Master: Do you have just one long kiln with gradually increasing and later decreasing temperature, or do you have a series of them?

A. No, our type of kilns, as indicated on the drawing, represents an area in which, starting from the west end, the cars pass through a gradual heating-up zone. That heating-up zone extends about two-fifths the length of the kiln. After getting through the—

The Master (Interposing) You have indicated on the map a distance of about six inches along one of these kilns, which, according to the scale of the map would be about 120 feet for that stage?

A Approximately that. And then the cars enter the furnace zone. The irregular shape of the ground plan of the kilns in the second section shows abutting parts of the brickwork which represent the furnaces. Each one of those represents a furnace or a place at which there is an oil burner generating heat in a furnace, which is in turn circulating through the kiln into the pre-heating zone. The products are drawn up through a main tunnel by means of draft fans which are on the west end of the kilns.

The Master: But the temperature is greatest immediately adjacent to the furnaces?

A. The heat cycle shows a steadily mounting curve until we leave the last furnace. Then it is a decreasing curve from that time till the ware comes out. If these cars in coming out were just allowed to cool naturally, they would come out at such excessive temperatures that you couldn't handle them and that the ware would be broken through the shock.

So at the east end of the kilns we have fans that are blowing quite a large quantity of room air into the kilns which passes straight through them and serves as a cooling medium for the cars as they are approaching the discharge end.

Q. (By Mr. Cooper) Is that operation handled entirely by machinery, or are there firemen or some such work classification at work at that kiln?

A. Well, the cars are moved along the tracks—there are miles of kiln car tracks both inside and outside of the kilns. The cars on the tracks outside of the kilns are moved in either direction by means of chain conveyors that are underneath the cars, and in going through the kilns, they are pushed through the kilns from the charging end by means of hydraulic pushers, the temperature being such that you couldn't use any mechanical device through the kilns. So that the train is pushed through by hydraulic pushers, pushing against the whole train of cars.

Q. Do the kiln firemen work at the point indicated on the exhibit as the bisque kilns, or is the work place of the kiln firemen elsewhere?

A. The kiln firemen—their duties require them to keep circulating during the time that they are on the job, keep circulating up and down the aisles between and on either side of the kilns, watching the individual furnaces, watching their instrument panels and keeping a general oversight as to just what is happening both inside and outside the kilns.

Q. How many hours a day are kiln firemen on the job?

A. The kiln firemen work on eight-hour shifts 24 hours a day. Of course, the kilns are in operation 365 days a year.

Q. Have you ever had occasion to be out in the plant and observe the changing of shifts among the kiln firemen, Mr. Doll?

A. Yes, I see them daily.

Q. Could you tell the Court what happens when one shift succeeds another?

A. Well, for instance, if one shift is finishing up at three o'clock in the afternoon the men on the other shift arrive at whatever time they may desire previous to the time the other man is stopping his work, and you will invariably see them during that time engaging in conversation as between the man who is just coming on and the man who is leaving his work. That conversation may be something of a private nature or it may be with regard to how the kilns are operating and how things have been going, and what the schedules call for the work to be done.

The Master: Does the new shift of firemen coming on proceed to a particular place along the line of the bisque kilns?

A. Your Honor, what you might say headquarters for change of shift is the instrument desk at one or other of the kilns. There is no rule regarding that. That is for the firemen to determine between themselves. Each kiln has quite an elaborate system of controlling instruments on it. These kilns are oil-fired. The temperatures are automatically controlled by instruments set to produce a certain temperature which the instruments do by automatically controlling the flow of the oil, and those desks—

The Master (Interposing) Mr. Lamb has to go now. Let me ask this question out of curiosity, how high does the temperatures run at the highest of these kilns?

A. The bisque kilns go to about 120 degrees Fahrenheit.

The Master: We will adjourn at this time unless you had one sentence to conclude.

A. No. * * *

June 18, 1942

By Mr. Cooper:

Q. I think, Mr. Doll, when court adjourned yesterday you were describing the operations in the bisque kilns, and the function of the kiln firemen. Would you please continue the description of the operations in that department?

A. I think I mentioned the fact that the kiln firemen and the attendants on the kilns, while they circulate around the kilns themselves in taking care of their duties, that their main headquarters are generally at the instrument panel boards at which there is a desk on each kiln. There is one attendant and one fireman in charge of each battery of kilns on an 8-hour shift, and these particular attendants, the fireman and the pusherman, as we call him, continue in charge completely in their particular shift until the expiration of the time of their shift when the next crew takes hold. They are not relieved of their duties until their stopping time has come to an end, and the starting time of the next shift takes hold. That is true of all of the kilns. After the cars leave the east end of the bisque kilns—

Q. (Interposing) Pardon me. If I remember correctly, you said yesterday that it took an average of about 48 hours for a car to go through the bisque kilns?

A. That is correct. After the cars come out of the bisque kilns on the east end, they are put over on the unloading—they are either put into storage or on the unloading line. The unloading line of the bisque belt system is the east end of the conveyor system that is marked on the plan as "bisque sagger filling."

At that point the saggers are taken off the cars, the ware is taken out of the saggers, the saggers flow back on the belts to the bisque sagger filling station, and the process begins over again of filling the saggers and loading them for the bisque kilns.

The ware that is taken out of the saggers at the bisque unloading station goes to the section of the plant shown on the plan as a dipping department. This is a combination department in which both the brushing and the dipping or glazing are done.

The Master: Pardon me. What is the appearance of the ware after it comes out of the bisque kilns? Is it hard by rough and finish?

A. That is correct. The bisque ware has its complete fired strength, but it has an unglazed surface, and it is porous, partly porous.

As this ware comes through from the bisque kilns, it frequently has little rough clay particles or portions of sand, things of that kind, on it. And, before the glaze can be applied, it has to be brushed.

Part of this brushing is done by hand brushes and part of it is done by passing the ware through machine operated brushes which clean the particles off, and this work is done by people known as brushers.

After it has been brushed, it goes to the dippers, hand dippers or the glazing machines.

In days gone by, all this ware was dipped by hand; that is, each piece individually was held by the dipper and immersed into a tub of liquid glaze. However, that process has been largely done away with. There is very little hand dipping done now, and the majority of the ware goes to glazing machines.

When it is placed in these glazing machines, which consist primarily of large circular tables on which the pieces of ware revolve on power-operated spindles, and as this table revolves, these turning spindles pass through booths in which there are spray guns that are spraying by means of air pressure the glaze on to both the face and the back of the pieces of ware.

As the ware comes through this glazing operation in the dipping department, it moves to the north to the area marked on the plan as the glost sagger fillers. At that point—

Mr. Cooper: Pardon me. Will you mark this, please?

(A floor plan was thereupon marked Defendant's Exhibit 76, by the reporter.)

Q. (By Mr. Cooper) I show you, Mr. Doll, a document which has been marked for identification as Exhibit 76 and ask you if you can identify it (handing exhibit to witness)?

A. This is a floor plan of the glost loading and unloading system showing its connections as well into the glost ware rooms with the chipping and selecting belts of that department.

Q. Does it show, in general, the same outline as to the glost system as appears on Exhibit 30-A, except for greater detail?

A. Well, the detail shown on Exhibit 76 is equipment that is installed in the area on the master plan shown as the glost car loading, glost car fillers—

The Master: Glost sagger fillers.

A. Glost sagger fillers, glost unloading.

Mr. Lamb: The master plan you are referring to is Exhibit 30-A. I guess the record can show that.

The Master: Yes.

A. And chippers and selectors.

Q. (By Mr. Cooper) Can you say, Mr. Doll, whether or not Exhibit 76 is an accurate and scaled drawing of the area you have just described? • • •

A. I can so identify it, and I can identify the equipment because I designed and built it. • • •

The Master: I think I will admit the exhibit. I don't think this witness is competent to testify that it is a scaled drawing, because I think only the man that drew it to scale can testify to that, but as to the general location and features of the equipment shown here, he is competent to testify to that. • • •

Mr. Lamb: And the record shows an objection to the admission?

The Master: All right, I think it already does, but it does now.

A. Referring to Exhibit No. 76 as another example of describing the process when we arrive at the glost sagger fillers, this particular drawing shows that there is a conveyor on the outside of the drawing on which the saggers, the empty saggers are flowing on a conveyor belt. There is an area just to the north of this particular conveyor belt where there are a series of sagger-filling stations indicated on the drawing by the diagonal parallel lines, each of which represents a station in which a girl stands, and as these saggers are deflected from the conveyor belt into their loading stations, the girls proceed to fill the ware into the saggers from shelves built in their stations into which the ware has been placed by men who take it from the trucks as it came from the dipping department and put it into the stations as the girls need it.

As each girl fills her sagger she discharges it on to the next parallel conveyor belt to the north. The saggers then flow to the west of that particular conveyor belt where they make a turn on a circular belt at the west end and start to flow in an easterly direction on the sagger-loading conveyor belt.

As they flow down this belt the man whose duty it is to load the saggers on to the cars, takes them off of this belt as they flow by and stacks them on to the cars which are slowly moving forward on what is shown as the loading track.

As each sagger is removed from the belt to go on the cars the belt continues in an easterly direction to a section known as the unloading track, where men, in turn, take the saggers off of the cars that have been fired and place them on to this same conveyor belt. They continue to flow in an easterly direction, then turn south, and again west, and at the point where the saggers turn west we have the sagger-unloading point.

The saggers continue to flow by; the ware that is in them is taken out by men and boys and placed on another conveyor belt running west. This conveyor belt carries the

ware into the glost ware room, or, as shown on master plan number—

The Master: Exhibit 30-A.

A. —Exhibit 30-A, it flows into the section shown as chipping and selectors. At that particular point two functions are performed. On the backs of each piece of ware are three little marks which have occurred there due to the fact that when the ware is being fired in its second or glost burning, you have to keep each piece separate and distinct from the others, otherwise they would all flux together, and they are supported in the saggers on some little clay pins. These little clay pins leave small marks on the back which have to be chipped off by the chippers. At the same time all pieces do not come through perfect and the ware has to be graded and separated into the first quality and the imperfections.

The Master: What percentage of imperfections do you get of ware, generally?

A. Well, of course, you can make or lose a great deal of profit off of the amount of imperfections that you have. That is one of the problems of the business, to keep down the imperfections. We try to operate at an average of not over ten per cent of imperfections.

After the ware—referring again to Exhibit 76—after the ware in the saggers has been placed on the loading track, the cars containing this ware moved in a westerly direction to the transfer track, and when they go on the transfer track they are moved over to an area north of the glost loading system and in between the bisque kilns and the glost kilns. This area consists of a series of parallel tracks upon which cars are stored waiting to be placed into the glost kilns for firing.

The cars then are placed at intervals into the glost kilns generally on an average schedule of about one car every 40 minutes. The cars and their product go through a stage of gradual heating up at the west end of the kilns, then through the fire zone in the center of the kilns and then through a gradual cooling zone on the east end.

When they come out on the east end they are then placed on the unloading tracks and are placed on the glost unloading area as previously described.

The Master: Is the purpose of these glost kilns to heat the glaze?

A. The function is entirely to burn the glaze, develop it into a glaze.

Mr. Lamb: How big are the cars that move into the heat treatment?

A. The cars are about 7 by 5 in length and width, and they stand about 30 inches off the floor, which gives us a loading area above the bed of the car of about 6 feet in height.

Mr. Lamb: Is the ware stacked on the cars when it goes into the kiln?

A. The ware is in the saggers, and the saggers are stacked on the car, one above the other.

Mr. Lamb: I see.

A. After the ware has gone through the chipping and selecting process, it is then ready to go either direct to the packing department if it is going to be shipped out as undecorated ware; or if it is going to have a decoration applied, it is ready to go to the decorating department.

If the ware is to be shipped out undecorated, it is trucked across—it leaves the main building and is trucked across the south siding and into the packing building, which is also a storage building for packed goods, which is a separate building located on the south side of the south siding. The ware is packed in cartons in that building, stored in that building if it is not intended for immediate shipment, or placed in stock piles from which orders are filled which are loaded by conveyors directly into box cars that are placed on a siding between the main building and the packing storage building.

And the ware that goes into the decorating department flows into the area shown on the master plan—what did you say it was?

The Master: Exhibit 30-A.

A. Exhibit 30-A, as decorating. Now, in this department we have decorators engaged primarily in two operations, one the application of decalcomania to the ware, which in our particular case is mainly floral decorations of some kind or another.

Mr. Cooper: Is Exhibit 60 an example of decalcomania.

A. Exhibit 60 is a sheet of decalcomania such as is used in decorating the ware.

Mr. Cooper: Would you please mark this next exhibit?

(A sheet of decalcomanias was then marked Exhibit 77.)

Q. In connection with the work in the decalcomania end of the decorating department, Mr. Doll, can you describe the operations connected with the large transfer sheets such as you have here, and its application to a particular piece of ware?

A. These sheets of transfers or decalcomania are lithographed on duplex paper, what is known as duplex paper. The duplex paper consists of a backing sheet of fairly heavy paper and a very thin tissue sheet superimposed upon that.

The first part of the operation is for girls to strip these sheets. That is, they separate the thin tissue sheet from the backing sheet, as you can see here. That has to be very carefully done, but you can without damaging pull this thin tissue sheet from the backing sheet.

After the girls separate and place together, one on top of the other, a number of these thin decalcomania sheets, and then they proceed to cut them into sections or blocks, as we call them, similar to what I have in my hand as Exhibit 77.

These blocks consist of various sizes of sprays, due to the fact that each particular article, that is, each size plate, or each cup or a certain kind of cup or a particular saucer has to have a spray designed particularly to fit around the rim of that particular article so that they are cut into blocks and given to them as they need

them for whatever particular article a girl may be working on at that time.

The operator has ware adjacent—the decalcomania operator has ware adjacent to her bench, and the first thing she does is to place a coat of size or varnish which she applies with a brush to the parts of the article to be decorated where the decalcomania is to be applied.

She lets this ware stand on her bench a sufficient length of time for the varnish to harden to a tacky stage, and then she cuts out as she requires from these block prints the pieces that she needs immediately to decorate the articles that she has previously varnished.

After placing these decalcomania sprays on the varnished area, the piece of ware, she takes another brush which has been dipped in water, and rubs on the reverse side of the paper so as to get the decalcomania color thoroughly adhering to the piece of ware.

Q. Pardon me, sir. Do you refer now to Exhibit 77, the piece of paper?

A. 77, yes.

Q. Could you show which side is placed against the piece of ware?

A. The lithograph or colored side is placed against the piece of ware. After rubbing that decoration on thoroughly she immerses the piece of ware into water, floats the paper off the back, and leaves the pattern in its color from adhering to the piece of ware. She places the ware, then, on her rack behind her bench for drying, and after that ware has set a sufficient length of time to be safely dry it is ready to either go to the decorating kiln, if no further processing is to be applied to it, or if there are other parts of decorations to be added, it goes to the people doing that particular line of work, or the people come to the racks of decorative ware, and may—and in the case of the pattern I am showing here, proceed to place a gold line on the edge of all the pieces that have previously been decalcomaniaed.

The major portion of our decorating is done by either the decalcomania process or by the application of gold

and color, by people who apply it with brushes for finishing off the design of the finished decoration.

The ware then is trucked to the decorating kilns which are shown in the north part of the decorating department by the lines on the print showing the outline of the kilns, and while they are much smaller, they are shown similar to what the bisque and glost kilns are.

Q. On Exhibit 30-A, those decorating kilns are below the word "glost" "Unl"?

A. That is correct, below the glost unloading system, south of the glost unloading system.

The ware goes into these kilns, is placed on cars, goes into these decorating kilns on the west end, comes out on the east end. It is a short firing cycle through these kilns, being about 8 hours, and after emerging from those kilns it is again inspected, and finally trucked to the packing department for packing into cartons.

The Master: These decalcomania sheets, you don't make them in your plant; you buy them?

A. No, the decalcomania sheets are printed for us by American Manufacturers. There are two parts of the general floor plan, No. 30-A, which shows on the south side of the plant the boiler and engine room. Next to that the sagger department in which the saggers are made for both the bisque and the glost cars. These saggers have only limited life. They deteriorate under the continuous burning, and finally have to be destroyed and replaced.

The Master: What material are those made out of?

A. They are made of a composition of fire clays together with a ground-up mixture of some of the old saggers. We are able to reclaim part of the old saggers by breaking them up and regrinding them and using a certain percentage of it in a fresh mix.

Also next to the sagger department comes the headquarters or maintenance department. Next to that the glaze room in which the materials are stored that enter into the glaze. These materials are weighed into batches as needed and placed in the revolving pebble mills. These mills consist of revolving cylinders into which the dry

materials are placed, water is added, and inside the mills there is quite a quantity of flint pebbles. The grinding is done by the mills slowly revolving and the pebbles keep falling over each other as the mills revolve, and in that way the material that has been placed in the mills is reduced down to the necessary fineness.

At the extreme east end of the plant there is the office building. In this office building is located one set of toilet and cloak rooms for men and women, for factory use, and on the second floor is a cafeteria. To the north of the glost kiln departments are another series of toilet and cloak rooms for men and women, and at the extreme west end of the plant is a section marked on the plan as "court," in which is located the sprinkler tower. The top of this tower is the water tank.

Q. I think you perhaps mentioned the boiler and engine room, Mr. Doll?

A. I did.

Q. And can you state what operation is performed by the boiler man?

A. In the boiler room we have three boilers. The function of our boilers is almost 100 per cent the supplying of steam for drying and other minor operations around the plant.

Next to the boilers is an engine room in which we have a generator and a stand-by engine. The plant is operated primarily with Edison current and we only operate the engine room in case of extreme emergency or breakdown of the Edison power, in which case our engine room could supply enough current to keep the kilns in operation on a temporary basis.

During the winter season and during the normal, the five days operation of the plant, even in the summer, the boilers are kept in operation on a 24-hour basis, with men working on eight-hour shifts. Each one of the boiler firemen is completely in charge of the boilers and held strictly responsible for the boilers from his starting time until his stopping time, when the man following him takes over the responsibility at his starting time.

Q. By the way, sir, do those boilers operate with coal or oil?

A. The boilers are operated with coal. The kilns are fired with oil.

Q. I think you also mentioned yesterday, Mr. Doll, the job of the pressmen in the slip house. Could you state just a little more specifically what the pressmen do?

A. Well, both the charging of the mills for the slip department and the operating of the filtering presses through which this slip is pumped is customarily done on a 24-hour basis. The pumps supplying the presses, of course constantly pumping slips into the presses, and this slip that is being pumped into the presses has to be replaced with fresh material coming from the charge mills into which the men are supplying the material.

Q. Is that slip simply liquid clay?

A. That is a combination of the mixture of all materials with water. These men also operate on an eight-hour shift basis.

Q. How many shifts a day, Mr. Doll?

A. Three shifts a day. And each shift is working and responsible for and completely in charge of the duties of that particular shift until the next shift takes over.

Q. How many days a week do they work there, Mr. Doll?

A. Five days.

Q. And what is their basis of compensation?

A. The basis of compensation is the dozens produced by the clay department from the clay that they have supplied to the clay department.

Q. Then does the amount that a pressman receives for a day's work depend on the amount of material which is turned out on his shift?

A. Directly. In other words, the whole process is continuous. If they did not prepare the clay, the clay shop couldn't make the dozens, and unless the clay shop produced the dozens, these men couldn't make the presses, because there would be no demand for them.

If you will notice in the description of the process as

I have tried to give it to you, that it is practically continuous from one end to the other. That is, from the raw material stage, as the ware is made, it is a constant flow right through to the cars in which the finished product is finally loaded.

The Master: Because of that, the production that any department can turn out is limited not only by their own ability and efforts, but also by what the other departments can turn out?

A. There is a direct inter-relation.

Q. (By Mr. Cooper) How many men work on each shift in this pressmen division in the slip house?

A. There are two mill chargers and two pressmen.

Q. And whether or not the amount of compensation depends upon the amount of work that the entire crew turns out during the eight-hour shift?

A. It does.

Q. Could you state, Mr. Doll, whether or not the glost belt system, as you have described it, is a common feature in the pottery industry?

A. It is an exclusive feature at the Mt. Clemens Pottery.

The Master: How are other potteries run? Do they have just individual kilns that they fire?

A. Continuous burning kilns of one form or another are rather generally in use in the potteries now. There are a few that still have the old beehive or intermittent kilns, as we call them, that you customarily see in pictures of potteries.

The Mt. Clemens Pottery Company was the home of the development of the tunnel kilns and the continuous burning process, and the development gradually spread to the other plants, so that they have something comparable in most of them now to our burning processes, but nothing of the character of our mechanical handling of the saggers through these loading and unloading systems that we have. Those are exclusive features that we developed. • • •

Q. (By Mr. Cooper) Is the operation of the glost belt system more elaborate or less elaborate than the method employed in other potteries?

A. It is more elaborate from the equipment standpoint, but simpler from the handling of the product.

Q. I think there has been mention made of certain cup machines, automatic cup machines in the clay department. Do you happen to recall when they were introduced, Mr. Doll?

A. The first automatic clay forming machine we installed went into commercial production about January, 1938.

Q. Have others been added since?

A. We have added to those since, but not for production of cups. About January, 1940, we added one for the producing of flat ware; small plates, saucers, articles of that kind.

Q. And there are also, I believe, certain dipping machines in the dipping department?

A. The spray glazing machines were a development that started with the first one going into commercial production in 1939, with the final installation of a fourth unit in about July, 1941. Your No. 2 and 3 units came in between.

Q. I believe there has been some discussion as to the location in the plant of various witnesses who have testified here went on their job. I don't believe that that is complete, however. Can you show on Exhibit 30-A, Mr. Doll, the location within the plant where Ernest Trombley's work station was located?

A. That is Earl Trombley?

Q. Earl Trombley?

A. Earl Trombley worked in this area shown on Exhibit 30-A as glost sagger fillers.

Q. Did Steve Anderson and Lillian Socia both work in the area indicated on Exhibit 30-A as dipping?

A. That is correct.

Q. Would they have any particular fixed station throughout the period of two or three years, or would their work take them to various places within the department?

A. It was necessary for them to move to different places in the department.

Q. And where, if you can show on Exhibit 30-A, would

Nicholas Dacko work during that portion of the time that he worked as a glost unloader?

A. Nicholas Dacko worked in the area shown on Exhibit 30-A as glost unloading. I think he also testified that at one time he was a—some months was grinding bats, in which case he worked in the sagger department.

Mr. Cooper: I offer in evidence, if the court please, Exhibit 77. That is the decal transfer sheet.

The Master: Any objection?

Mr. Lamb: No objection.

The Master: Admitted.

Q. (By Mr. Cooper) Before you built the plant of the Mt. Clemens Pottery Company, Mr. Doll, did you have experience in other potteries?

A. Yes. I have been connected with potteries since I was 17.

Q. What, in a general way, was the nature of your prior experience in the pottery industry?

A. Well, I have been, in my years of experience, office boy, foreman, superintendent, sales manager, and general manager.

Q. Since assuming the management of the Mt. Clemens Pottery Company, have you retained the familiarity with the general practices in the pottery industry?

A. I have.

Q. By the way, is there any particular feature of the pottery industry which facilitates obtaining familiarity with the general practices?

A. Well, it is comparatively simple to know what the industry in general is doing, due to the fact that about 80 odd per cent of it operates under a—well, about 80 odd per cent of it are plants that are members of the United States Potters Association. This association for the benefit of its members, conducts negotiations with a national brotherhood of operative potters, and their labor agreements are made with that organization and are uniform throughout the plants of the association.

Q. Does your company belong to this association?

A. We do not.

Q. By the way, is the union that you speak of affiliated with the A. F. of L. or the CIO?

A. They are an A. F. of L. affiliation.

Q. You said, I think, that some 80 or 88 per cent of the industry is represented in this association that you speak of?

A. It is something over 80 per cent.

Q. By the way, what percentage of the dinnerware production of the pottery is represented by the Mt. Clemens Pottery Company's production?

A. About 12 per cent.

Q. Can you state, Mr. Doll, with reference to this collective bargaining agreement that you spoke of, whether there is a general custom in the industry as to computing hours worked, and if so what it is?

Mr. Lamb: Objection. As I understand it, this company isn't even a participant in that association.

Mr. Cooper: The custom is nevertheless material, your honor. It doesn't mean that they don't follow the same customs, or that they do.

Mr. Lamb: There is no showing that they do.

The Master: Well, if he knows what the practice is in other potteries, I will take it as evidence. One citation was given here, or a quotation from a wage and hour opinion, and I think according to my recollection, Mr. Lamb quoted it at the time and stated that the practice and conditions prevailing in other plants, or in plants in general in the industry, would have some bearing upon the interpretation of the wage and hour act. I do not suppose it would be conclusive, but I will take it as evidence.

A. Will you read the question?

(Question read.)

A. To my knowledge, in the plants that we have referred to, the method of computing hours is rather slipshod. These plants are built as a rule in the open with numerous doors around them, and in fact I think that our—I know that our plant is the only plant in the industry that is surrounded by an industrial fence, and where employees all enter and leave from the one en-

trance. The customary practice in the other potteries is to allow the piecework employees to enter and leave at will through almost any doorway or entrance that there may be around the outside of the plants. Time clocks are used very little and only for hourly working operators. The balance, the piecework operators' time is generally kept by the foreman in the departments, noting down each day the number of hours that the employee claims to have worked.

The Master: Are most of your competing potteries located in Ohio?

A. They are located in the Ohio section, that is in the eastern Ohio section, in and somewhat adjacent to East Liverpool, and you will find that the custom prevailing in one is pretty much followed out by the others.

The Master: In the pottery business, is the business concentrated in the hands of a few large potteries, or are there a great many small units?

A. From the standpoint of the sales volume, the large part of the total sales volume would be perhaps in about five companies. The largest one of those companies, though, has about half a dozen plants, scattered plants, and then there are a number of smaller concerns scattered throughout that general area of Ohio. There is very little dinnerware production in any other part of the United States, outside of the one plant in Michigan.

Q. (By Mr. Cooper) By the way, how does the plant of the Mt. Clemens Pottery Company compare in size with the Ohio plants that you speak of?

A. Well, from a standpoint of an individual producing unit, we have the largest individual producing unit in the country. There is one company whose total volume of business is larger than ours, but their output is divided into about five plants.

Q. Going back to the method generally employed in the industry as you have described it in computing hours worked, can you say, Mr. Doll, whether or not that practice and that system is supported by practices under the collective agreement to which you referred?

(Objection overruled.) • • •

A. I am very well acquainted with the other manufacturers and learn of their conditions and what they are doing, by visits that I have made to their plants, by conversations with the owners or the operators, and also by the fact that we receive the copies of their agreements whenever they are made, and know what is provided for in these agreements. One of the clauses in these agreements is that they—

Mr. Lamb: An objection. If he is going to discuss a clause, we should at least have it. • • •

The Master: I think it is a proper subject for expert testimony. Go ahead. • • •

A. The potteries operating under an agreement with the National Brotherhood of Operating Potteries, can individually only install time clocks through an agreement entered into between the individual plant and the local operating within that plant.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Cooper) Whether or not, if you can say, a considerable portion of the industry represented under this collective agreement does not use time clocks?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: Unless he names the companies.

A. To my knowledge, time clocks are very little used in these plants, except for a limited number of day wage workers.

Q. (By Mr. Cooper) By the way, how did you happen to install time clocks at the pottery company, Mr. Doll?

Mr. Lamb: Objection.

The Master: Overruled.

A. Many years ago we had time clocks for a few hourly workers, but we did not have pieceworkers on time clocks. We first put all workers on time clocks about 1933 or along in that period when NRA first came into existence.

Q. How many clocks were installed?

A. The first clocks—well, back at the time that we only

had the hourly workers on the time clock there was simply one clock in the whole plant. After we put all employees on time clocks about 1933, we installed clocks A and B shown on Exhibit 30-A.

Q. By the way, are they both the same type of clock?

A. They are not. Clock A is an International, operating on an entirely different mechanism than clock B, which is a Stromberg electric.

Q. At the time the time clocks were installed back about 1933, was a method set up to compute the number of hours an employee had worked?

A. Yes, a method was set up at that time.

Q. Did you have something to do, Mr. Doll, with devising that method?

A. I did.

Q. Can you describe what the system is, and how it was set up?

A. Well, the system that was set up at that time is the same system that has been in operation ever since; that is that the record of attendance of employees was to be recorded on the time clocks, that the hours they actually worked were to be entered on the cards daily for the benefit of office records as well as for the benefit of the employees knowing the time that had been charged to them.

Q. Was any period of time fixed with reference to when an employee could enter the plant and punch in in the morning?

A. The original rule was that the time clocks would be open for 14 minutes before the starting period. • • •

Q. (By Mr. Cooper) Has that same rule been followed ever since down through the period involved here?

A. It has.

Q. By the way, before the time clocks were installed, and this system set up, was there a limitation as to the time when a piecework employee could enter the plant in the morning?

A. No, there was not.

Q. May I ask, Mr. Doll, how you adopted that 14-minute interval?

Mr. Lamb: Objection.

The Master: Overruled.

A. As I previously testified, I have been in the business, actively engaged in manufacturing or supervising manufacturing, for many years. I was entirely familiar with the habits, the reasoning, and the general custom of employees as to coming to work, and also entirely familiar with the time element required for the average person to get himself or herself ready for work. Consequently, in adopting the 14-minute period as reasonable, or as a maximum period that people could utilize to get themselves ready for work, I was following a knowledge of the actual conditions involved together with an understanding of human nature and the application of a common sense rule. • • •

Q. Was that the same 14 minutes on the clock for all the employees, or were there different 14-minute periods?

A. Well, there would be a 14-minute period before whatever the starting time might happen to be in the department, and of course, the starting time was different in the different departments.

Q. And there would be an allowance of 14 minutes before the starting time in the employee's particular department, is that correct?

A. That is correct.

Q. What was the situation with reference to the close of work and punching out of the time clock?

A. They were allowed a 14-minute period in which to leave or get from the department to their time clock and during which to perform any other personal duties that they might have to do and want to do before being charged with another quarter of an hour.

Q. And what was the purpose in setting up this 14 minute period?

Mr. Lamb: Objection.

The Master: Overruled.

A. The purpose was two-fold; one was to establish a rule that was fair to the employee, as well as a rule

that insured the employee being ready and available for production at the established starting time.

Q. (By Mr. Cooper): Whether or not there was any requirement as to the time an employee would punch the time clock?

A. He was permitted to punch in at any time between the 14 minutes and his established starting time.

Q. Was it a matter of the employee's convenience as to when he wanted to punch in?

A. It was, yes.

Q. Suppose that an employee whose starting time was 7 A.M., punched the time clock at exactly 7 A.M., as of what time would his work be computed as having begun?

A. As of 7 o'clock.

Q. In setting up this 14-minute period, Mr. Doll, did you take into consideration your observations over a period of years of the practices of employees in coming into the plant and going to work?

A. We did.

Q. What part do the time clock cards play in this system of computing the hours of work, Mr. Doll?

A. They are first of all a record of attendance.

Q. Could you keep your record of the hours of work without using time clock cards?

A. We could.

Q. Is it more convenient from the viewpoint of office work, and so forth, to have the time clock cards, or would it be more convenient to not use them?

A. It would be more convenient to the office to use time books.

Q. Is there a more or less established book system that you refer to?

A. Well, the wage and hour law permits the use of time books of any system that adequately reflects the hours that people actually work.

The Master: What is the time book system that you refer to?

A. The time book system that we could use and which would be simpler if certain aspects would be for the

foreman of each department to keep a time book in which was recorded the names of the employees and the hours worked.

The Master: Would the foreman under that system that you speak of, enter the time that the employee arrives in the morning and the time he leaves at noon?

A. No, he would simply note the hours worked.

The Master: Does the employee sign the entry or participate in any way in the entry?

A. Such systems are in use in various plants where they don't, or where they do sign.

The Master: Then why do you resort to the time clock method of keeping the record of hours worked?

A. Because of the fact that we thought that the time clock method would do away with any possiblity of a dispute as to the attendance, or more especially the fact as to whether or not the person really was getting there in time to be ready for work, whereas the other system, a person might slip in late, and the foreman afterwards when he asked him, well, he has been here all day and put him down for 8 hours.

The Master: Do I understand the testimony you have given that if the established starting time is 7 o'clock, you ask the employee and want the employee to be at his place of work and ready to start production work at 7 o'clock.

A. That is correct.

The Master: You also mentioned that you didn't care whether the employees checked in at the time clock at 14 minutes to 7 or whether they waited until one or two minutes to 7 or even at 7 o'clock, that they would still get credit for starting at 7. How do you reconcile the two statements?

A. Simply this, that the responsibility we place upon the employee is to be ready for work.

The Master: If he checks the time clock in at 7 o'clock, he obviously can't be at his place of work at 7 o'clock.

A. No, we realize that he wouldn't be starting work until after. But the question was asked me if he did punch in at 7, would he still get credited for having started at that time. Well, under the rule of recording the time, he would, but actually he would not have started at that time.

The Master: And actually the plant management would disapprove of his coming in regularly and punching the time clock at 7 o'clock?

A. His foreman would certainly remonstrate with him about it. That actually happens frequently where people have to be cautioned about it. We don't fire them on account of it, because the big majority of them realize the reasonableness of it and finally adjust themselves to it.

Q. (By Mr. Cooper) Then this system as you have described it, of computing hours of work, has been in effect at the Mt. Clemens Pottery Company down through the period involved in this suit and for about how many years before that?

A. If my memory is correct, it is just when NRA went into operation, which I think was along about 1933. It had been in operation then about 8 years at the time of the suit.

Q. And in retaining the system through this period of time, Mr. Doll, were you familiar with the practices as you have described them in other industries of keeping time on a time book without use of time clocks?

A. I was. We felt this was a much more thorough and fair system.

Q. Were you familiar with the interpretative rulings of the wage and hour division to the effect that time clocks were not required?

Mr. Lamb: Objection. * * *

The Master: I think I will take his testimony subject to the objection in order to get the testimony on record. I don't at the present see just the materiality of it, but I do think your question was in the leading form and you should ask him to what, if any, extent, rulings of the

wage and hour act or department were taken into effect in establishing the system, rather than referring to a specific ruling.

Q. (By Mr. Cooper) Were you familiar, Mr. Doll, with certain interpretive bulletins or rulings of the wage and hour division with reference to the use of time clocks?

A. I have read such.

Q. Have you been familiar with them for quite a period of time?

A. I have since the—it is my recollection since shortly after the law went into effect.

Q. And were you then familiar with those as you continued this system of computing time through the period involved in this suit?

A. I was.

Q. Can you state, Mr. Doll, on the basis of your observations and knowledge, whether or not the employees of the pottery understand the system under which hours of work are computed?

Mr. Lamb: Objection.

The Master: I think that asks for a conclusion. I will sustain the objection to that.

Q. (By Mr. Cooper) Have you ever had complaints from employees with reference to, for example, the matter of computation of the size of their pay checks?

Mr. Lamb: Objection.

The Master: Overruled. That is one of the issues.

• • •

A. In the making up of payrolls, there is always the possibility that either through a recording or through a calculation, an error might be made. An employee might be over-paid. Occasionally an employee might be under-paid.

In the case of the under-payment, which, of course, would be entirely a matter of a mistake or an error, the employee will so report to his foreman, and the foreman will bring the matter to the office, either taking it up

himself and having the matter investigated for the benefit of the employee, or, as frequently happens, bringing the employee to the office with him, and, of course, where an error is shown, it is promptly corrected.

Q. (By Mr. Cooper) Did you ever fire an employee for making such a complaint?

A. We certainly have not. In fact, we welcome them doing it when they are right on the matter, or even if they think they are right in the matter. We would rather have them come to the office and satisfy themselves than to harbor any ill feeling.

Q. I will ask you whether or not any of those complaints have related to the matter of computing hours of work?

A. They have never.

Q. Whether or not any employee has ever advised you that he felt he had worked longer hours than was shown on his time clock card?

Mr. Lamb: Objection.

A. We have never had an instance of that kind.

The Master: Overruled. * * *

The Master: Do the employees ever come to you and make complaints in person? * * *

A. The way that I would learn of these instances, your Honor, is this; the fact that I circulate throughout the plant so much, and I am very closely in touch with our foremen and department heads, and we stop and daily talk over this, that, and the other. They are very prone to report things of this kind to me—

The Master: Who do you mean, "they," the employees or the foremen?

A. No, the foremen are very prone to report to me particularly if they thought that there had been any delay or not enough promptness on the part of the office in conducting an immediate investigation, or if they thought the thing indicated some carelessness on the part of the office employees, that I should know about it. But if, on the other hand, the foremen were receiving complaints

with regard to the hours charged to an employee, which would involve company system or company policy, that would be very promptly reported to me by the foremen.

The Master: Does he have instructions of that sort, that complaints resulting from company policies should be reported to you?

A. Absolutely, that is one of the things we think efficient management must have, and that is sources of getting first-hand information. • • •

Q. (By Mr. Cooper) Are the computation sheets open for employees' inspection?

A. Absolutely, at all times, and when an employee questions a record he or she is brought right to the computation sheets.

Q. Can you say from your observations whether or not there is any particular practice in the decorating department as to the keeping of notebooks by the individual operators?

A. In our decorating department they operate under a system whereby they check their own notations with the department records in charge of the foreman before the final pay sheets go to the office.

Q. Do I understand you correctly that a girl keeps track in a notebook of her own production?

A. That is correct.

Q. And checks that against the foreman's figures?

A. That is it.

Q. Before the report is sent to the office?

A. As a matter of fact, in that particular department we accept their figures.

Q. Is it true that in certain departments a slip showing the inspector's count of the pieces done is given the employee so that he will have a duplicate of the company's record?

A. In the clay department they have duplicates of their production.

Q. And how is the production kept track of in the brushing and dipping department, for example? Is the

employee's count taken as to the amount of production for which he will be paid?

A. The employee's count is accepted in the brushing and dipping department.

The Master: What check do you have on that to determine whether or not the employee is putting in too high a count?

A. The check we have on it is by a comparison of the total dozens shown by the fill of the cars as against the employee's calculations as total dozens produced.

The Master: Do you make a daily check on that?

A. Those are checked per pay.

The Master: Do they always come out exactly even?

A. They don't come out exactly even. While I don't think—we have never found evidences of a deliberate attempt on the part of employees to stuff their count, the trend of the difference is a little in the employees' favor.

Q. (By Mr. Cooper) Going back, I would like to ask you, and perhaps I should limit this particularly to the period involved in the suit, whether you spend a particular portion of your time in the operating portion of the plant?

A. As I have previously testified, I am out in the plant considerably more times than I am in the office or engaged in other duties.

Q. You have some opportunity, then, of knowing plant problems and plant procedures from first-hand observation?

A. I make a point of adjusting my duties so I can have that.

Q. Have you had occasion to observe the situation in the plant in the morning as the employees come in for the day's work?

A. I frequently see the employees arriving in the departments.

Q. By the way, can all the departments start out at once, at the same starting time?

A. Throughout the whole plant, in our type of opera-

tion, the operation does not adapt itself to all departments starting at the same time.

Q. Could you describe how the plant is put in operation in the morning, describing what operations have to precede others as the day's production commences?

A. Well, starting with the slip department, that department, operating on a 24-hour basis, the one 8-hour shift follows the other one in natural sequence, and they are responsible for preparing in their 24-hour period enough clay to keep the clay shop in production during their two-shift basis.

The clay department; having a starting time generally of 6 A. M. in the morning, is based upon so splitting the time of the two shifts so as to not make either the morning shift abnormally early in coming or the second shift abnormally late in going home, and of course those shifts switch from week to week. They are not always the same mornings or the same evenings.

Then we get down to the kiln departments where, of course, we have a three-shift basis there, and that automatically takes care of itself. After we leave the clay department, practically all the other departments are on a single shift basis, with starting and stopping time fairly close together.

So that your shift in hours is to a big extent controlled by the three, two or one-shift proposition.

Q. There are, then, different starting times for the different departments?

A. That is correct.

Q. Can you state some typical starting times for the various departments at the beginning of the day? For example, what is the normal starting time in the clay shop?

A. Well, the clay shop normally starts at 6 o'clock.

Q. Are there other departments with a regular starting time of 7 o'clock?

A. Yes. The department in which the clay ware is loaded—that is, the bisque loading department—they will

start sometimes at 6:30, sometimes at 7 o'clock. And we come down to the other departments, basically they are on a 7 to 7:15 or 7:30 starting time basis, according to conditions that prevail over different periods of the year.

Q. Have you had occasion to make any observations, Mr. Doll, of the employees coming in during this interval and punching in at the time clocks?

A. Yes, I have seen them on the early shifts as well as afternoon shifts. I know how they line up and the general conditions connected with the checking through on the clocks.

Q. Would you please describe that situation?

A. Well, we will take a typical instance of, we will say, a department or a group of departments that are going to start at 7 o'clock, and in which the time clocks are opened at 14 of. In a case of that kind you will find a certain number of people, the early birds, who are lined up at the clock on that particular morning, waiting for 14 minutes to come. When the signal is given that the clocks are open and they can begin checking in, they start to go through.

Now, depending upon the length of that line determines how many people go through during the early part of the 14 minutes, but after those that have accumulated and those that keep straggling in while the line is moving up or going through, you are gradually approaching the end of the line.

After the end of the line goes through, why, then, what you say,—the people are coming in in between or half way point between the opening of the clocks and starting time; they begin to straggle through and finally you get down to the real stragglers who are just beating the gun by a few minutes, or just barely getting in on time or will be late in starting.

It is very simple to tell from the line-up how much delay there is for the people at the tail end of the line in being able to punch through as against the people who are at the head end of the line.

The Master: I take it that more employees come in at 7 o'clock, or on that shift, than at any other time?

A. As far as one individual time clock is concerned there probably were on time clock B more people coming in around that period.

The Master: How many employees, roughly, will have to punch in at these two time clocks A and B, or each of the two time clocks A and B between 14 minutes to 7 and 7 o'clock?

A. You are referring to the period previous to this action?

The Master: Yes, the period of 1938 to 1941.

A. In the case of time clock A, the slip department, which was comparatively a small department, would be punching in earliest. Then when you came to the people coming in for the clay department, there would be in the neighborhood of 300 coming through on each shift. And, over on the time clock B there would be from 200 to 300 going through on that particular clock. • • •

The Master: Do you have any idea how long it takes 300 employees to punch the time clock, pass the clock?

A. Yes, I definitely know. I have frequently checked it myself, and they go through the time clocks on an average of about 25 per minute.

The Master: So that if they were all lined up there at 14 minutes to 7, that would be about 12 minutes?

A. 300 people would take 12 minutes to go through.

The Master: It would be two minutes to 7 before they could all be through?

A. The last one would be through.

The Master: The man that got through at two minutes to 7, would he be ready to go to work at 7 o'clock under ordinary conditions?

A. He would not.

The Master: Then, at the very best some of the employees are bound to be late in going through, are they not?

A. All employees do not get started at work at the starting time.

The Master: And even if they all arrived at 14 minutes to 7 it would still be impossible for all of them to be at their position of work and ready to do production work at 7 o'clock?

A. In the case where as many as 300 or more people were going through a clock.

The Master: All right.

Q. (By Mr. Cooper, continuing): By the way, would it take the same amount of time to get them through the time clock, Mr. Doll, whether they were lined up before the time clocks were opened or whether they came in in various groups or singly during the 14-minute period?

A. I have frequently observed them with that particular thing in mind, and the time would be just about the same except in the case where you have a few brand new employees switched into the line, in which case there sometimes is a little bit of confusion in not being able to grab the card out of the rack, insert it in the clock, and put it in the other side of the rack as quickly as the experienced employee.

Q. I think you referred, also, to time clock B. It appears on Exhibit 30-A, does it not, that there are two time clocks at the point marked "time clock B"? • • •

A. Exhibit 30-A shows an arrow specifically pointing to time clock B. On the other side of the aisle there is a marking which rotates time clock C, but it is not specified on the plan. Time clock C was not installed until about the month of March, 1941. • • •

Q. (By Mr. Cooper): Considering time clock "A" and the time clock which was at point "B" during the period up to March of 1941, what type of time clocks were they, Mr. Doll?

A. Well, "A" was an International, and "B" was a Stromberg, both electric clocks.

Q. Just what would an employee have to do when he

was going through the time clock, as we speak of it, what would be his precise steps?

A. In the case of time clocks "A" and "B", they are similar in this respect, that the employee first locates his time card in the rack, withdraws it from the rack, inserts it in the slot of the time clock, pushes a lever, releases a lever, takes his card out and proceeds to place it in the rack on the other side of the time clock.

Q. And during the period involved what would be the average number of persons going through time clock "B" for the 7 o'clock shift?

A. About 25 per minute—oh, you mean as to the total number?

Q. The total number.

A. The total number going through there at any particular starting time would be between 200 and 250.

The Master: How did you happen to install a second time clock at that point?

A. As a matter of splitting the plant into two pay periods, that is, we pay on a two weeks' period, about one-half of the employees are paid on one period, and one-half on the other.

Now, for the convenience of the employees, the employees on time clocks "B" and "C", use these cloak rooms in the administration building on the east end of the plant, and they are all paid on one Friday. The other employees that use time clock "A" use the cloak rooms on the north side of the plant and they are all paid on another Friday.

The Master: The question that I have in mind is how did you happen to install an additional time clock right opposite the time clock "B"?

A. Oh, this was installed here because there was some congestion in getting through that time clock, and at the request of the employees, it really was, we put in the other clock at the request of the employees.

Q. (By Mr. Cooper): Would there be line-ups that

would occur from time to time during the 14 minute period that the employees would be punching through the time clock? * * *

A. There is always a group congregated ready to go through as soon as the clock is open. While they are moving through, others arrive and come in on the tail end of the line. Finally you really get the line through, then you come to the point where they are arriving by twos and threes, and then finally to the single stragglers coming in on the finish.

The Master: In the clay shop you said there were about 300 employees on each shift?

A. That would be going through the clock at one time.

The Master: That would be going through the clock at one time, and that is not only true in the morning but it is also true at noon when they leave for their lunch half hour?

A. Absolutely, wherever they go in they have to come out.

The Master: And the lunch period is the same throughout the clay shop, that is taken at the same time?

A. Not entirely. The people operating on the automatic machines frequently have a slightly different lunch period than the people working on the hand jobs, or than the people doing other operations in the clay department.

The Master: Is there any considerable number of them working on the automatic machines?

A. There are quite a few, yes.

The Master: About how many?

A. Well, you take from a standpoint of the—any one shift, the number of workers on each machine is—they represent about fifty people.

The Master: So that there would still be about 250 people who were not working on the automatic machines and who would go out to lunch at the same time?

A. That is right.

The Master: And when they leave for lunch, at best it would take them ten minutes to pass the time clock?

A. It would take them on the same basis, if they were all lined up, it would take them ten minutes going out.

Q. (By Mr. Cooper) Would the number of employees that would get through the time clock in the course of a minute vary somewhat, perhaps up or down from 25, depending upon whether or not there were a group waiting in line with their cards all ready.

Mr. Lamb: Objection to the form of the question as leading.

The Master: Read back the question.

(Question read.)

A. When I—

The Master (interposing): Just a minute. The witness can state as to whether or not the 25 per minute average which he gave is subject to variations, depending upon different factors, and state the factors that affect the variation, if there is the variation. That will eliminate any leading form to the question.

A. I have checked them and observed them myself, and I have checked them as fast as 28 and I have checked them as slow as 22. And I know that the 25 is a fair average.

Now, the variables that cause that are, as I said a bit ago, the speed with which an experienced worker who has been doing that for years, takes the card in and out and punches it and puts it in the other rack and goes on his way, as against the beginner who is not so familiar with things.

And then also, like in all operations, piecework operations or anything else that human beings do, everybody—or one person is not necessarily as fast as another. Consequently, according to the way the fast or the slow ones may be grouped in there is what determines your average speed in going through the clocks.

Q. (By Mr. Cooper) Are employees expected or required to punch the time clock at any particular time during this 14-minute period?

A. They are not.

Q. Are they expected or required to go to work as soon as they can after punching the time clock?

A. They are not—they are told not to, and at the same time they do not.

Q. Are you familiar from actual observation, Mr. Doll, with the activities of employees in the plant during this 14-minute period before an established starting time?

A. I am.

Q. Would you describe the situation?

Mr. Lamb: Objection, unless he identifies the particular employees and the days he is describing them.

The Master: I will overrule the objection. General testimony has to be given on that and was given in behalf of the plaintiffs and can also be given by the defendants.

A. It is a very interesting study to observe a thing of that kind. In years gone by there might not have been any particular importance attached to it, but under present conditions those things are noted and observed.

First of all, after the employee has punched the time clock, you note, if you are really studying the situation, that the speed or the rate at which different ones walk from the time clock to his department varies quite decidedly.

The gait at which they walk is quite different. If someone further up the line is walking very slowly some people will continue,—will go along adjusting their gait to the gait of the person up ahead. If, however, somebody thinks that gait is too slow he may cut around and get up further in the procession.

That is the first thing.

The second thing that is interesting is that despite the fact, as is shown on Exhibit 30-A, there are toilet rooms to which the employees may go before they arrive at the time clock, that after they have gone through the time clock if they happen to pass another set of toilet rooms, why, some of them will stop in there; or, they will stop at the drinking fountains as they go along. They invariably

come in in twos, stroll along in twos and threes chatting and talking as they go among their own particular group. If they are passing employees of another department in their line of travel they will sometimes stop and talk to these other employees.

I have seen them even digress from the regular line of travel to his department and go over into another department where he may want to say a word to an employee in that department if that department happens to be working.

When they get down to the particular place in the department at which this employee is going to go to work, unless he has come in late from the standpoint of punching in close to his starting time, he is quite leisurely in getting himself ready and taking care of the little duties connected with the personal things that he has to do to get ready to start.

We have a good bit of conversing among our employees, perhaps more than what they would have in some other sections due to the fact that we have such a large number of them that are interested in boating. Some of them have boats of their own. In fishing, in pheasant shooting in the fall, and in deer hunting and in things of that kind.

Mr. Lamb: I object to all this type of conversation.

The Master: I will overrule it.

A. And I know, as a mater of fact, that they spend quite a bit of time in visiting back and forth. The time is their own. You can find no fault with that. And, there is a kind of a sociability connected with those starting periods. And then they go about,—every job has a lot of little personal things to get ready to enable them to get started promptly and to enable them to operate efficiently. These people are 98 per cent on piecework operations. They become very proficient at it. They know the things that they should do ahead of time to get themselves properly set to start promptly and to make the best use of their allowed working time. • • •

Q. Could you state, Mr. Doll, whether the finishers in

the clay department sometimes purchased their supplies during this period that we were talking about before the noon recess, in the 14-minute period preceding the regular starting time?

A. Quite—

Mr. Lamb: Objection.

The Master: Overruled. Go ahead.

A. Quite a number of them make their purchases of their supplies before starting time, particularly on the afternoon shift.

Q. Can you state from observation whether any particular amount of time is consumed in that connection?

A. Well, in a case of finishers, they do take quite a little time in purchasing their sponges, due to the fact that a number of them will arrive at the stock room in the same general period, and of course they like to select their own sponges. In the stock room they will have a tray or a cage with quite a number of sponges in it, just as they have come from the bales, and a finisher, when her turn comes after the girl ahead of her has been waited on, she will step up to the cage and paw around among them, pick out one that seems to suit her, and then she will dip it into a pail of water setting alongside the cage, to soak it up to see after it is soaked up if it suits her. She may go through half a dozen of them before she finds one that really suits her, but the choice is hers, so we let her pick out one that suits her and reject as many as she sees fit.

Q. What would you say as to whether or not the employees commence actual work before the established starting time?

A. The general average of employees—

Mr. Lamb: Object to the question. Let the record show an objection.

The Master: On the ground it is too general and has to be limited to a particular time and place?

Mr. Lamb: That is one of the grounds.

The Master: What other grounds?

Mr. Lamb: Materiality.

The Master: Well, I don't see any question of materiality. The other ground, why—I will let him testify this way. I think I permitted it for the plaintiffs and so I will permit it for the defendants.

Mr. Lamb: It is a conclusion.

A. My observation and knowledge of the situation is that the employees do not start work before starting time, and that they frequently start after.

Q. (By Mr. Cooper) Now, you have described the beginning of operations in the morning, Mr. Doll. Now, can you tell the Court what the situation is with reference to quitting time at the end of the day?

A. Well, take, for instance, the piecework department, such as the clay department, and in fact with nearly all piece workers, they try to schedule their work and do schedule their work so that they are on the safe side of the starting time in finishing up. They will not run the risk of carrying over portions of a unit and endeavor to finish up on the basis of a complete unit.

This invariably means that they are through with the units that they have been working on, they are through with the cleaning up incidental to their jobs, making themselves personally in readiness to leave the department, and do many times leave the department before quitting time, stopping at the wash rooms or toilet rooms as they go out, and many times are waiting at the time clock ready to punch out at the earliest possible moment.

Q. Have you had occasion to observe how steady work continues during the day?

Mr. Lamb: Objection.

The Master: Overruled. • • •

A. Piecework employees are not engaged in productive work during the entire established or allowed work period. The big majority of our people are good workers. They are interested in earning, but they do not hesitate to take a few minutes here and there throughout the day to relax from the tension of continuous production.

They, of course, stop production whenever they take

time out to go to a drinking fountain or to go to a wash room or to take a few minutes to perform some incidental function connected with the particular job.

During the course of the work period, employees do go to the stock room, make purchases of supplies. They have knives or individual tools that they have to keep in condition to work, and as long as they show by their general production and attention to the work that they are on the job, that they are trying to produce, that they are interested in producing from their own standpoint as well as ours, we do not object to these minutes that are taken out in the course of the work period.

Q. What is your observation as to how the company's computation of hours worked compares with the actual hours of work?

Mr. Lamb: Objection.

The Master: I think this question is more questionable. I will take his answer.

A. Our study of the situation convinces us that our method of calculating is more than fair to the employee.

* * *

Q. (By Mr. Cooper) Could I ask you whether it is more or less than the amount of time actually worked?

Mr. Lamb: Objection.

A. Our estimate is that the time recorded is more than the time actually spent in production work.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let that answer stand. I will strike the previous answer about it being more than fair to the employee.

Q. (By Mr. Cooper) In referring to the time recorded, you refer to the hours computation which appears, among other places, on the right-hand column of the time clock?

A. That is correct.

Q. Have you ever heard of any preparatory operations or cleanup operations being performed by an employee either before he rang his time card in the morning, or after he had punched out the time clock at night?

Mr. Lamb: Objection; asking for hearsay. "Has he ever heard of something."

Mr. Cooper: Well, I can ask him whether he knows of it.

The Master: Ask him whether he knows. I will accept the question in the revised form. Do you know of any such?

A. I do not know of any duties that they perform, outside of the incidental personal duties. • • •

Q. (By Mr. Cooper) Do you know of any employee in the glost belt department coming in on a Monday morning to load the saggers and loading saggers before punching in his time card?

A. As to my knowledge, all work is performed after the time clock is punched in and after the regular starting time.

Q. Is the method of paying employees largely on piece rates, more or less peculiar to the Mt. Clemens Pottery Company, or is it common throughout the industry?

A. Piece rate—

Mr. Lamb: Objection.

The Master: Overruled.

A. Piece rate operations are typical and prevail throughout the pottery industry.

Q. (By Mr. Cooper) Could you state briefly, Mr. Doll, just what is meant by the term "piece rate system"?

A. Well, the piece rate system is one in which the employer agrees to pay a given sum for a certain unit or pieces of work, or certain service performed, and which is understood and agreed upon between the employee and the employer, and which has two primary purposes; one, of giving a fixed cost on that item of production, and, on the other hand, given the employee the opportunity through his individual skill and initiative to earn the maximum of his ability.

Q. There has been some reference made during the course of the hearing, Mr. Doll, to an employee punching the time clock, as for example, 10 minutes to 7, and being paid from 7 o'clock. Now, is the piece rate workers paid from 7 o'clock?

A. The piece rate worker is paid for the units of piece work produced.

Q. Is he paid for simply making his services available during certain hours?

A. He is not, because he distinctly differs from an hourly worker. An hourly worker is paid for the time he puts in on the job.

The Master: Of course, where you have a group piece work rate, sometimes the employee may make considerable earnings even if he doesn't turn out much production, may he not?

A. Theoretically that is true, but actually the layout of those group operations makes it practically impossible for a single individual to soldier on the job, because it would so disrupt and retard the operation of the group that even if the employer was willing to put up with it the balance of the workers would not be.

Q. (By Mr. Cooper) Do you have anything to do with fixing the piece rates at the pottery, Mr. Doll?

A. I do.

Q. Can you state whether or not the time which is required to perform an operation is taken into consideration in determining the piece rate?

A. Basically the piece rate is based upon the amount that can be produced in a given length of time, and also means—and also must make allowance for any supplies that the employee would have to acquire in the carrying out of that piece rate. In other words, it must be based upon what is left to the employee after he has put in the time, produced the units, taken care of the incidental duties connected with the job, and provided his supplies.

Q. So that the aggregate piece rate includes not only compensation for services rendered, but compensation for supplies or tools furnished by the employee?

A. It does.

Q. Now, how can the piece worker's rate of pay be measured on a time basis, so far as you can say?

A. Well, it can't be uniformly measured on a time basis when you take into consideration the difference in skill and speed of various operators. In other words, one

operator will produce more per hour in the way of earnings than another operator will.

Q. And will the production of a given operator vary from hour to hour to some extent?

A. It does.

Q. Would it be true, then, that a piece worker's rate of pay doesn't depend on any time basis, but simply on what he produces?

A. The piece worker's rate of pay basically fixed upon a time factor, but, nevertheless, its final result is dependent upon the effort, skill, and industry of the individual worker.

Q. (By Mr. Cooper) Is there any difference between, Mr. Doll, a work week of 40 hours and a work week of 2400 minutes?

A. There is not.

Q. Can you say whether or not—

A. Mr. Cooper, I would like to say in your former question, my answer is based upon that 40 hours of actual working time and 2400 minutes of actual working time are one and the same thing.

Q. Can you say whether or not from the viewpoint of the hourly rate worker and the viewpoint of a piece rate worker, there is any difference between the 40 hour week and the week with 2400 minutes?

A. Fundamentally and actually there is a very great difference.

Q. From your observation, what is it?

A. An hourly worker is paid on the basis of the time that the employer permits him to work, whether or not he performs any services within that period, or the extent to which he applies himself to his particular tasks during that period; whereas, the piece work operator is very largely a working—well, in fact, is exclusively working individually, and while he is working he is producing and earning for himself. Whenever he stops working, he is neither producing for himself or earning for himself.

Q. This may be permitted as an informatory question,

your honor. On your observation, then, Mr. Doll, what is customarily included in the hours of work of a piece worker?

Mr. Lamb: Objection.

The Master: I will take the answer.

A. The hours of work of a piece worker is the time that he actually is engaged in production.

The Master: Do you mean then that from your conception of the definition of hours of work that an employee at your plant who is paid for 40 hours worked under the system that you use, nevertheless actually works much less than that, because of the fact that during a day he takes a few minutes off to go to the toilet or to fix up his tools, or to relax a few minutes?

A. That is correct.

Q. (By Mr. Cooper) What is the general practice in the pottery industry as to the furnishing of such tools as sponges and brushes and the other tools that have been referred to here?

A. Where the company maintains a supply and sells them to the employees, it is industry-wide a custom for the employee to pay for them.

Mr. Lamb: I ask that the last part of the answer be stricken as to the—

The Master: I will let it stand.

Q. How do you determine which items of equipment and tools and materials are to be paid for by the employees and what items are to be paid for by the company?

A. It is based upon established practice in the industry that dates back long before I knew anything about the industry.

The Master: In the case of an employee in the clay shop, let's take a jigger man, for example; he uses a scraper and also a pail, and the finisher that he works with uses a sponge, is that right?

A. Yes.

The Master: And all of those items he is required to buy himself, or was during this period, at least?

A. That is correct.

The Master: He also has some kind of a bench or table in front of him that he works upon?

A. He bears no expense of the installation or maintenance of equipment.

The Master: Are there any other movable items of equipment that he uses in his work, that the company pays for and that he isn't required to pay for?

A. I can not recall anything that the clay shop workers, in connection with the jiggering operations, purchase except sponges, pails, scrapers and occasional finger cots.

The Master: Are there any movable items of equipment that the company pays for that he uses?

A. All movable items—all movable and stationary items of equipment other than these incidental tools that I have spoken of are the property—supplied and the property of the company.

The Master: What other items does the jigger man use in his operation?

A. Well, the jigger man doesn't—he uses his machine, he uses his jigger.

The Master: That is quite an elaborate machine?

A. Well, that is a power-operated machine. The machine, the belts that go with it, the motors that drive it, that is all, of course, furnished by the company. The batting-out equipment which we use in our shop, which is far superior to anything used in the other shop because of its taking so much labor off of the batter-out, is electrically operated as against a hand operation in the other factories, but we don't charge any of that expense against the batter-out.

There is the dryer that goes with the jigger man's operation, commonly referred to as a mangle. That, of course, he has nothing to do with the installation or the maintenance of. The finisher utilizes a tool known as a finishing tool, which is supplied by the company.

The Master: What kind of a tool is that?

A. The finishing tool is a very light, small instrument in which we have a very minute carboloy tip in it, on the

end of a piece of spring steel, and she uses that to smooth off the edges of a piece of ware while they are revolving around on a wheel.

The Master: Roughly, how much does that tool cost?

A. That particular one?

The Master: Yes.

A. That particular one costs about 75 cents apiece.

The Master: Are those tools being lost and mislaid fairly frequently?

A. Well, some of them do disappear, but we don't have, in the case of these particular tools, so much trouble, because they are a type of thing peculiar to our own operation, and there would really be no incentive for anyone to—

The Master (interposing): They don't use those in other potteries?

A. They do not.

The Master: Is that the reason why you make the distinction between that tool and the scraper that the jigger man uses, as to who is to pay for it?

A. There is, your honor. In the other potteries the finishers use a different type of tool which is purchased by the jigger man and supplied to the finisher. It is simply a piece of metal of a certain shape, made of soft steel, and a finisher has to stop her work repeatedly during the course of the day and file that edge sharp. Now, what we did for them when we developed this tool that we use and which we furnish to them without charge, because we make them up ourselves, we developed this carboloy point which enables a girl to work day after day without having to sharpen that point at all. And these points do require some attention. They return them to the filing room at intervals and sooner than have them their property we have retained title to them ourselves and supply them to them without charge.

The Master: Why is it that the jigger man paid for the finishers' sponge and tool before you developed this particular tool?

A. Strange as it may seem, this particular industry is a victim of some old English customs—I don't know how far back they go—that were imported to the United States with the original English potters that came over here in the early 1800's and built and put into operation the first potteries. Those old English customs were followed here. They were vastly different than the American customs, but up until within recent years it was universal, and it still exists in some of the potteries, the jigger man was permitted by the company to even hire his batter-out and his mold-runner and his finisher. He paid them out of his own wages practically whatever he got ready to pay them. He hired for whatever he could get them for and paid them. The company paid him for the entire operation and, consequently, all these tools were charged to him and he bore them—took them out of his money.

So that we have corrected a great many of those old customs as times went on that existed in the other potteries, and to a certain extent existed in our plant many years ago, but there are a few of them that—perhaps that is about the last one that was hanging around that needed correction that hadn't been put on a more business-like basis.

The Master: In your plant are the employees largely recruited from men and women that had previous experience in the pottery business, or are they largely working men who have come to your plant and learned the pottery methods in your plant for the first time?

A. Our organization is practically 100 per cent made up of people that we have trained and developed ourselves.

The Master: I am just wondering, apart from the issues in the case, as to why you don't simply cut through all this question of deductions for items of personal equipment used—equipment and tools used by the employees in the business and have the plant furnish them, with the employees being paid an adjusted rate, what-

ever is fair, but so that what they receive is the net amount they receive instead of having them receive a certain amount with deductions therefrom?

A. Your Honor, the answer to that is very simple. There is no way of controlling the wastage of these things by putting them on a basis wherein they were furnished to them free, even if there was an adjustment in the wage to take care of it.

I can best illustrate that for your personal information by citing this, that last March when we decided to readjust rates so as to provide for the finisher buying her own sponges instead of the jigger man furnishing to her, as soon as that went into effect the finishers used 50 per cent less sponges than what they had been using when the other fellow was paying for them.

The Master: Go ahead.

Q. (By Mr. Cooper) Showing you Exhibit 2, Mr. Doll, which has already been identified as an annual earnings card of Steve Anderson, is that the regular form of annual earnings card which you have for all of the employees (handing exhibit to the witness)?

A. A record of this kind is kept for each individual employee for a year at a time.

Q. Is there a column on that and the other individual earnings records headed "Gross Pay"?

A. There is.

Q. Are any deductions made from any worker's gross pay for the price of materials furnished by the worker?

A. The gross pay represents the amount left after the purchases have been deducted.

Q. I am not sure whether you have been asked about this before, whether or not in fixing a piece rate there is taken into consideration the amount of supplies which have to be used in connection with the particular operation?

Mr. Lamb: Objection.

The Master: Overruled.

A. In fixing a piece rate all factors are taken into

consideration that have anything to do with what will be finally left to the employee as representing a fair rate of pay. • • •

Q. (By Mr. Cooper) And whether or not the cost of any supplies purchased by an employee is taken off before his gross pay is computed and entered on the records?

A. Any deductions for supplies purchased have been taken out before the amount is shown on the yearly earnings card under the heading of gross pay.

Q. Where do the employees of the pottery buy these various supplies?

A. Some of them buy them on the outside; a big majority of them buy them from the company stockroom.

Q. If they do buy them elsewhere, is any kind of a deduction charge made by the company?

A. None whatever.

Q. Are you able to state of your own knowledge why most of the employees buy these items from the company's stockroom?

Mr. Lamb: Objection. He isn't qualified to answer that. • • •

The Master: This question now is as to whether the witness is able to state whether or not he knows, and I will get the witness' answer yes or no to that as to whether he knows. Then I will take the objection into consideration on the next question.

A. I know why they buy them from our storeroom.

The Master: How do you know?

A. I know it for two reasons: One is that they can't buy the same items for the same money from a store, and, secondly, because employees have told me the comparison of values when they have attempted to buy them from stores. • • •

Q. (By Mr. Cooper) Can you state, Mr. Doll, what are the comparative costs of items of supplies which you have been referring to as bought in the company's stockroom and when bought at outside stores?

Mr. Lamb: May I state my objection before he answers that question?

The Master: Yes.

Mr. Lamb: Obviously this witness will make a self-serving declaration and, of course, he sells in his company's store goods at less than the Kresge outside store might sell to these same employees, and I think the proper way of proving that is not by hearsay as to what he hears that some employees, someone else may say or buy at an outside store, as compared with the price he charges in his own store. • • •

The Master: He may answer the question.

A. I can recall in the case of some canvas gloves that I previously testified to in this hearing, we are supplying to employees at 12 cents. Those same gloves can not be purchased at retail for less than 15 cents. On other types of gloves— • • •

A. I was about to refer to sheepswool sponges which we have been for the last couple of years supplying to employees at actually less than what they cost us, because the price of sheepswool sponges went so high that we couldn't even ask them to pay what they cost. As an illustration, we have been—up until about 6 months ago we were selling sheepswool sponges to the employees at 35 cents, that were costing us 60 cents each.

The Master: You mean 60 cents each out of pocket, or do you include overhead in that?

A. They cost 60 cents each at the fisheries in Florida. • • •

A. Since that time we have been charging them 40 cents for these sponges, and they have been costing us from 75 to 82 cents apiece. • • •

Q. (By Mr. Cooper) What are some of these items of supplies handled in the company's stockroom, Mr. Doll?

Mr. Lamb: You mean that are sold to employees?

Mr. Cooper: Yes.

A. Well, they are canvas gloves, sponges, finger cots,

some small camel's hair brushes that are used by liners, decalcomania rubbing brushes, decalcomania size brushes, pails. I think I have named all that amount to anything.

Q. Now, in connection with such matters as gloves, or finger cots, or brushes, or pails, does an employee have occasion to purchase those quite frequently, or rather infrequently as compared with sponges?

A. Everything except sponges are very trivial items, both from the standpoint of the individual employee and from the standpoint of the aggregate.

Q. Outside of sponges would you have any idea as to the total cost to the employees of the other items sold?

A. Aside from sponges it wouldn't amount to $1,000 a year.

The Master: You mean all the employees in the entire plant?

A. Yes, sir, with the exception of sponges.

Q. (By Mr. Cooper) And that would be approximately how many employees?

A. Well, at the period of which we are talking it would be in the neighborhood of close to a thousand production employees. Of course, understand there were many, many employees that do not buy anything at all.

Q. By the way, have you ever made any attempt to change the practice as to the furnishing of supplies?

A. Ask that again, please.

Q. Have you ever made any attempt to change the practice which you have described as to the employees obtaining their items of supplies?

A. Yes, we have frequently endeavored to get the local merchants to go into the kind of these supply item more extensively, and I personally suggested at one time to both the keeper of a small store across from the pottery who sells miscellaneous supplies and to the proprietor of a gas station across from the plant who also sells miscellaneous supplies in conjunction with his gas business; I have personally asked them to put in a line of these items, and see whether they could take over the

business and make anything out of it. Both of these chaps took the matter under advisement, and afterwards, reported to me that there were two reasons why they wouldn't go into it; one was that the volume wouldn't justify, and the second was the employees were so accustomed to buying these things within a certain price range that they could not possibly sell them at anywheres near those prices, and make anything that would justify them in the investment.

(Whereupon a document was marked as Exhibit No. 78.)

Mr. Cooper: If the Court please, the document which I am holding that has been marked Exhibit 78 for identification, is a table which was prepared pursuant to your Honor's suggestion at the hearings last February, showing the total amount of the supplies purchased by one of the employees, to-wit, Dorothy May. There was some discussion by us about Dorothy May's deductions, and it was your Honor's suggestion that we go through all of the several compilations and show the total cost over the entire period involved from October 25, 1938, to April 22, 1941. We will have in court before we are done here, the individual who made the compilation. This is simply a summary of what appears from the books which have already been marked, and I should like to offer it at this time on the basis I have outlined as being a summary taken from the books, as your Honor suggested, and we can bring in later, if it becomes necessary, the person who checked through it. • • •

The Master: Then I will let you use it as though it were in evidence and withhold a ruling on its admissibility until such time as it is identified by the employee who prepared it.

Q. (By Mr. Cooper) Exhibit 78, Mr. Doll, shows that over a period from October 25, 1938, through April 22, 1941, the cost to Dorothy May of supplies purchased by her from the company amounted to a total of $6.34. Are you able to state whether or not that is about a typical instance of the aggregate cost of supplies to an employee?

A. This would be a typical instance of the cost of supplies to a person doing the work that Miss May is doing.

The Master: Was she in the decalcomania department?

A. She was a liner.

Mr. Lamb: Does she buy sponges?

A. I don't think she would buy any sponges. It was probably lining-brushes.

Q. (By Mr. Cooper) The girls who did buy sponges worked at higher rates, too, did they not?

Mr. Lamb: Objection. Higher rates than what? • • •

The Master: I will take his answer.

A. As I previously testified, the rates are set with due allowances for the amount of supplies the people who have to purchase in the particular line of work in which they are engaged.

Q. (By Mr. Cooper) Are piece rate workers in the pottery industry paid their piece rates for pieces if they spoil them and which cannot be used?

A. No, they are paid only for the good pieces.

Q. Are you speaking of the Mt. Clemens Pottery particularly, or of the pottery industry in general?

A. I am speaking of the industry in general.

Q. What is the customary practice in the industry as to such items as crooked ware, bisque-grinding, wheeling out molds? Perhaps I should take them one at a time.

A. Which one are you taking first?

Q. Let's take this matter of bisque-grinding.

A. Bisque-grinding is a defect that has been left on a piece of ware by the finisher after she has completed her work on that piece of ware and which she should have removed. After that ware comes through the fired stage if it is necessary to set such pieces out and grind off the defects; part of the expense of that is charged back against that crew.

Q. What type of worker is it who is charged with responsibility for the situation that necessitates bisque-grinding?

A. It becomes a joint responsibility of the jigger man and the finisher.

Q. Do jigger men and finishers ever do their own bisque-grinding?

A. They have done in days gone by. They don't do it now. We stopped having them do it at their own request.

The Master: When did you stop that?

A. That dates back quite some few years ago and was based upon requests from these workers that they could save money by having these defects ground off for them than to lose the higher earning rate that they could maintain by not doing it themselves. • • •

Q. (By Mr. Cooper) As to the bisque grinding, as I understand it, the custom of the industry was that the jigger man would do his own bisque grinding?

A. That is right.

Q. Now, does the operation of bisque grinding require a greater or less degree of skill than the operation of jigger man?

A. Oh, far less skill.

Q. What does that mean with reference to the wage expense of getting the bisque grinding done?

A. Well, what we finally may charge back to the jigger man and the finisher wouldn't represent 25 per cent of what they can earn in the meantime by not doing that operation.

The Master: You mean their wages are four times as high as the wages of those that are doing the bisque grinding?

A. No, I didn't say that. I said we did not charge back to them the expense of all that operation. We only charge back to them about 50 per cent of it.

Q. (By Mr. Cooper) What has been the customary practice in the industry as to sorting out crooked ware?

A. None of the companies pay for ware that they discover to be defective in the clay state. Crooked ware is easily discerned in the clay state because the pieces are stacked one on top of the other, and if there are crooked pieces in there as a result of improper making, they can be seen. And, it is necessary for either the crew to take those pieces out themselves or to have somebody do it for

them, because they are not accepted by the company. • • •

Q. And what has been the customary practice as to who inspects and sorts out the crooked ware?

A. Well, formerly when there was crooked ware among a crew's production, the foreman would notify them to go over their ware and get those defective pieces out, but, of course, they would have to do that on their own time, and that would take away from their productive time.

Q. The crew in that case would be the jigger man and batter out?

A. The jigger man, batter out and finisher would all take part.

The Master: They would then re-mold it and then send it back?

A. No, it has to be broken up then.

Q. (By Mr. Cooper) Has there been any change in that customary practice at the Mt. Clemens Pottery Company?

A. Again at the request of these people, and by mutually satisfactory arrangement, girls were provided to do this particular work when necessary.

Now, of course, understand this, that this is—we are talking about exceptions to the rule, not the rule, as to these particular things that happened. They are very minor items and very minor instances. But, where they do come up a girl is provided who performs this operation for these people. They pay for the expense of the girl to do that work for them, and they in the meantime continue with their production and profit by what they would have otherwise have lost by not being able to produce.

The Master: The ware that in this clay state which is not correctly formed, and has to be destroyed, you don't pay the particular crew for that ware, do you?

A. We do not.

The Master: And do you charge it back to the particular crew or do you charge it back to all of the crews?

A. No. We charge it back to the individual crew that made it.

The Master: Now, the cost of these girls that inspect

the ware is charged back uniformly or pro rata to all of the crews in the department, or will her wage rate be charged back to particular crews?

A. The time that she spent on that individual inspection is charged back against that particular crew whose work she was looking over.

The Master: In other words, a record is kept of the amount of time she spends in inspecting a particular crew's work?

A. That is right.

The Master: And if it takes her longer to inspect one crew's work than another crew's work, the crew with which she took the most time will have a larger deduction than the other crew?

A. That is right, and many days go by when you don't have to call her into service at all.

The Master: She is paid on an hourly basis?

A. She is paid on an hourly basis.

Q. (By Mr. Cooper) There has also, I think, been some mention made of a deduction for wheeling out molds. Can you tell the Court what the situation is as to that, Mr. Doll?

A. In the course of a day's operation or in the course of a few days' operation, depending upon the man, a jigger man or his batter out will drop or chip or bump or something of that kind, some of their molds causing them to be defective. They accumulate those few pieces, as again it is a very small amount, and there is not much of it has to be done, because we couldn't afford to have much of it done, we couldn't let a man be that careless, but they accumulate a few of these damaged molds, and maybe once a week or twice a week, as the case might be, why, a laborer will come around and clean up a man's bench for him and take those pieces out to the dump. That again is an operation belonging to the jigger man crew, but quite a while back at their request, the practice was established of having a laborer do this work for them, so that they could continue with their work and also because of the fact that particularly in the winter weather

they would prefer not to have to go outdoors after being used to the warmth of the department.

(Whereupon a document was marked Exhibit 79, by the reporter.)

Q. (By Mr. Cooper) I hand you, Mr. Doll, Exhibit 79 for identification, and ask you what it is?

A. Exhibit No. 79 is the yearly earnings card of Barbara Bowling for the portion of the year 1940, in which she worked.

Q. When was she hired?

A. The first pay that she drew was the pay of July 23, 1940.

Q. At what rate was she paid at that time?

A. Her first two pays show that she was paid at a rate of 30 cents an hour.

Q. What is the meaning of the higher hourly rates received on Exhibit 79 by the later weeks?

A. The record here shows that during the balance of that six months' period, her rates continued to advance until they reached 50 cents an hour, is the highest one shown, and that indicates that she had begun to produce in excess of her minimum rate. That is that the piece work she performed when figured at the piece work rates amounted to more than her 30 cents an hour, and consequently she was paid the higher amount.

Q. How was the 30 cents an hour arrived at, Mr. Doll?

A. The 30 cents an hour represents the legal minimum, and on those two particular pays in which she was paid 30 cents an hour, it means that she either earned 30 cents an hour, as is most likely the case, she earned less than her 30 cents when figured at piece work, and the difference was made up to bring her to the statutory minimum.

Q. After a worker gets on what you describe as the piece rate basis, do their rates as it is listed on the annual earnings card vary up and down?

A. It does.

Q. By the way, when is that rate computation arrived at?

A. The rate computation of the average that the employee earns per hour is arrived at by dividing the gross pay by the hours worked.

Q. How low might that rate fall for a worker?

A. Well, it could fall down to zero, but we would still have to pay the party the minimum 30 cents an hour if we kept her in our employ.

Q. Is there a guaranteed minimum of 30 cents an hour which all the employees get regardless of their production?

A. There is. * * *

Q. (By Mr. Cooper) By the way, what time is shown in the column "Hours worked"?

A. The time shown in the hours worked is the company's calculation as to the maximum time that the employee could have worked on that particular pay.

Q. Now, does this system as you have described it, apply only to this Barbara Bowling, or is it the same for all of the employees?

A. It is the same for all of the employees.

Q. What is the apprentice system in use in other potteries, if you know, Mr. Doll?

Mr. Lamb: Objection. The part about the apprentice system in other potteries is immaterial.

The Master: I will take the answer.

A. The potteries that we previously referred to as operating under the agreements of the National Brotherhood of Operative Potters have definite apprenticeship scales in their departments.

Mr. Lamb: May I state my objection now, and state that this company is not a party to the agreement he is discussing.

The Master: Yes, but I will take the testimony on the ground that although he may not be a party to it, he may be familiar with the conditions in other potteries.

A. And they have definite apprenticeship scales whereby the various trades in the potteries work at apprentice discounts for from periods of 3 to 5 years at specified discounts

from the established rates, the savings in the difference in the rate going to the company during the apprenticeship periods.

Q. (By Mr. Cooper) How does that system compare, Mr. Doll, with the way that learners and beginners are treated in the matter of their compensation at the Mt. Clemens Pottery Company?

A. We do not have the apprenticeship system and operate on the basis that people get full rate as soon as their earning rate exceeds the minimum.

Q. By the way, are their certain items in use in the plant known as ware carriers or trucks?

A. There are quite a variety of different types of trucks and ware carrying conveyances.

Q. About how much do they cost?

A. Well, they are in the form of an ordinary wooden bin mounted on rubber-tired casters, from about $50 apiece up to lift trucks running four to five hundred dollars apiece.

Q. What type of employees use those trucks?

A. They are used in all departments of the plant.

Q. That is, they would be used, for example, by jigger men and by batter outs, by finishers, or are there other particular employee groups?

A. All departments use them in one form or another.

Q. But are they used by all the employees in all the departments?

A. No, not used by all employees in the same department, but they are used in conjunction with the production of that department. They are generally specified employees that do the trucking.

Q. Are they generally among the more skilled or the less skilled employees who do the trucking?

A. The trucking is generally done by the less skilled people.

Q. Are these people who do the trucking required to furnish their own ware carriers or trucks?

A. They are not.

Q. No deductions from wages for those?

A. Never heard of such a thing.

The Master: Are they paid on a straight hourly rate?

A. No. There may be some of them paid on an hourly rate, but they are more apt to be on the piece work system.

Mr. Cooper: I offer Exhibit 79 in evidence, the annual earnings card of Barbara Boeling (handing exhibit to Mr. Lamb). • • •

The Master: I will admit the exhibit.

Mr. Cooper: Mark these, please.

(Four documents referring to Arthur Sibbi were marked Defendant's Exhibits 80, 80-A, 80-B and 80-C.)

Q. I hand you, Mr. Doll, what has been marked for identification as Exhibit 80, 80-A, 80-B and 80-C, and ask you to describe the sheets appearing there (handing exhibits to witness)?

A. Exhibit 80 is a photostatic copy of the time card of Arthur Sibbi for the pay ending March 25, 1941.

Q. And Exhibit 80-A is what?

A. Exhibit 80-A is a copy of the work sheet of Arthur Sibbi for the pay ending March 25, 1941.

Q. That 80-A is an excerpt from the particular pay sheet which ties in with time card, Exhibit 80?

A. It is for the exact same pay and period.

Q. Do you know whether or not this Exhibit 80-A is a true copy from a particular sheet in your original records which has already been marked as an exhibit here?

A. It is a true copy. • • •

Q. (By Mr. Cooper) And what is Exhibit 80-B for identification, Mr. Doll?

A. Exhibit 80-B is the identification slip which Arthur

Sibbi signed at the time he drew his check for the pay ending March 25, 1941.

Q. Can you state whether or not during the period involved, such a slip was signed by each employee as he received his pay check?

A. It is signed by each employee as he receives his pay check as identification to be handed to the pay master before he can receive his check.

Mr. Lamb: Is that a photostat?

Mr. Cooper: Yes, sir.

Q. And, Mr. Doll, Exhibit 80-C is what?

A. Exhibit 80-C is Arthur Sibbi's annual earnings record for the period from January 1, 1941, until the last day he drew on March 25, 1941.

Q. Can you state whether or not that is the original from the company's record or a verified copy of his 1941 earnings card through the period of May 25th?

A. This is a verified copy.

Q. Have you verified that one?

A. I did.

Q. Can you state briefly, Mr. Doll, the use to which these documents are put in the record keeping system of the Mt. Clemens Pottery Company?

A. Well, as I previously testified; the time card is a record of attendance, and a record for the employee as to the number of hours charged by the company, as to the time he actually worked on each individual day.

Q. Could you state the practice of the company with reference to the time when the numerals in the right-hand column of the time clock cards are inserted?

A. Each morning on the time cards, all the time cards are removed from the racks. After the people have punched in, the entries as to time actually worked are

put on the cards in the right-hand column. The cards are then put back into the racks where at the next ring, the hours charged are shown for the information of the employee who is using that particular card.

Q. And at what time, with reference to that does the record appear on the compilation sheets as to the number of hours worked?

Pardon me, sir, I may have confused the record in referring to Exhibit 80-A as the compilation sheet. Is that the term you used?

A. These are our work sheets.

Q. Work sheets?

A. At the time the hours charged up as actually worked, are entered on the time cards, they are entered on to the individual work sheet of the employee, the daily entry.

Q. And is the amount—let me strike that, please. Is the determination of an amount of an employee's wages made on the work sheet?

A. The calculation as to the amount earned, is shown on the work sheet.

Q. And are employees paid by check or in cash?

A. They are paid by check.

Q. What day is pay day, by the way, sir?

A. We ordinarily pay on Fridays.

Q. And what is the work week?

A. The work week is customarily from Tuesday—from Wednesday morning until Tuesday evening.

Q. Is that true in all the departments?

A. There is one exception. That is, that the decorating department runs their week from Tuesday morning until Monday evening.

Q. And at what stage in the process are the wage

identification slips used, such as illustrated by Exhibit 80-B?

A. When the payroll is made up and the checks are arranged for distribution, we then run, at that time run these wage identification slips through the addressograph, putting on each one the name, the social security number, the clock number, and the date of the pay. When time comes to distribute the checks, the foreman or the superintendent, as the case may be, generally it is the superintendent with the foreman as his assistant, distribute these identification slips to the proper employees. The employees then form in line, and as they go by the pay window and present this identification slip, the paymaster issues to the party the check that has been made out for that particular person. He must sign the identification slip, however, before he presents it.

Q. And then finally you have an annual earnings card for each employee?

A. Yes.

Q. And what is its function?

A. Exhibit 80-C? Is that—are you referring to this one or to the general principle?

Q. To Exhibit 80-C, as an example of the individual earnings record?

A. 80-C is a yearly earnings card, is the card that is kept for the entire year. Upon which is recorded the hours worked, the gross pay, the social security deductions, and insurance deduction, if the employee is carrying group insurance. It also shows under the column headed "Rate," it shows what the employee averaged per hour for any particular pay by dividing the amount of money he drew by the hours worked.

Q. Whether or not the work sheets are bound into book

form and become a part of the permanent records of the company?

A. How is that?

Q. I asked you, Mr. Doll, whether or not the documents which you have described as work sheets are bound into book form and kept as a part of the permanent records of the company?

A. They are.

Q. In summary, then, you have in your records, time clock cards, these books of work sheets, the wage identification slips and the annual earnings cards, is that correct?

A. Also the cancelled checks.

Q. (By Mr. Cooper) Let me ask you first, which of these documents, Mr. Doll, is the record of the hours worked per day and week and the pay received by each employee?

A. Well, the work sheet is the most detailed record.

Q. And how far back do your work sheets go?

A. Our work sheets go back to the year 1934.

Q. Do the records in those work sheet books reflect the name of the employees?

A. They do.

Q. And the day when the work week begins?

A. Yes.

Q. The occupation of the employee?

A. Yes.

Q. Does it show the basis upon which his wages are paid?

A. It does.

Q. Does it show the number of hours worked each day and each week?

A. It does.

Q. Does it show overtime payments?

A. It does.

Q. Does it show additions and deductions from wages, if any?

A. That is correct.

Q. The total wages paid?

A. It shows the total wages paid, with the exception of deductions for social security and insurance.

Q. Does it indicate the pay period covered by the payment?

A. It does.

Q. And those books are a part of the permanent records of the company?

A. They are.

Q. You have them available back to what year, did you say?

A. 1934.

Q. Now, has it been the custom of the company to preserve permanently the other sorts of documents which are used in connection with your general record keeping system?

A. We had never preserved our time cards for any very lengthy period, that is, in a period of years. It had never been the company practice. The work sheets are preserved for quite a few years in bound form. The identification slips are not retained for any length of time, as they have served their purpose; and the annual earnings cards are a permanent record ever since this system has been in use.

Q. Mr. Doll, do you recall whether or not the wage and hour division of the United States Department of Labor inspected the Mt. Clemens Pottery Company plant in 1939?

A. The Wage and Hour Division had two inspectors at our plant for approximately four weeks in 1939.

Q. Do you recall the month now?

A. Part of October and November, as I recall.

Q. So far as you observed and participated in this inspection, please describe to the Court what happened?

(Objection overruled.) • • •

A. When the first inspector called upon us, we, of course, very cheerfully submitted to him all our records in order to make sure that he had clear insight into everything, in order to make sure that he was entirely conversant with the fact that we were entirely satisfied to have him there, at least to have him there, and I personally made sure he had every facility afforded him to make any kind of an examination or determination he cared to.

There was no feature regarding our payroll system, our method of computing, our recording, or paying, but what they went into very thoroughly, and with plenty of time to study it and know exactly what they were doing.

In addition to that, towards the conclusion of the inspection, one of the inspectors came to me personally and he said, "Now, Mr. Doll," he says,—

(Objection overruled.) • • •

A. Mr. Rifan came to me, and he said, "Mr. Doll," he said, "one of the routine parts of our inspection is to talk to the employees. Now," he said, "I can either talk to them here or I can talk to them in their homes."

He said, "Of course, it would save me quite a great deal of work if I could talk to them right in the shop."

I said, "That is entirely satisfactory to us, Mr. Rifan. How do you want to do it?"

"Well," he said, "I would like to go through the plant and talk to them at will without anybody else being present."

I said, "That is all right." I said, "I will provide you with a guide who will go through with you. You can point out any man or woman in the plant you want to talk to, and say that is a party I want to talk to, your

guide will introduce you to the employee, and leave the place where you are talking to them and not come back to you until you are ready for him to take you to another employee."

Mr. Rifan spent quite an amount of time in going through the plant from one end to the other, and as the party whom he accompanied told me afterwards, he interviewed about 30 employees scattered throughout the plant. We were also told that the completeness and the detail with which our records are kept was very much to be complimented.

The Master: Will you name the individual who told you that?

A. Mr. Rifan.

The Master: And the place and the parties present and the time as best you can recall the conversation.

A. I do not recall whether there was anybody else present at the time he made this statement, but he said he found them much more complete and much more in detail than what they found in their other inspections.

Q. (By Mr. Cooper) What was the result of that inspection, Mr. Doll?

A. The result of that inspection was that the wage and hour department discovered one error in our method of calculating, and that was that we had during the first year—

Mr. Lamb (Interposing): Is this conversation that occurred when someone was present? • • •

The Master: Well, again, when you are giving a conversation, you will have to give the name of the person and the time and place and who was present as best you recall it.

A. Mr. Rifan was the party that was again talking to me on this particular error that he found, and it was during this 4 weeks period in the fall of 1939.

The Master: Now state what he told you, to the best of your recollection.

A. He told us that the plan that we had been using

of, during the year that the workweek was 44 hours per week, that the plan we had been using of averaging the pay period or the two weeks' period and not paying overtime unless it was in excess of 88 hours was incorrect, that we should have dealt with each individual week individually on a 44-hour week basis. He convinced us that we had been in error in that particular thing, and after he did so, we told him that we were very glad to correct the matter, and proceeded to do so. * * *

A. We had thought we were entirely right in averaging the two weeks, and we had done a great deal of that averaging of the two weeks at the request and for the accommodation of the employees who would find it more convenient.

(Objection.) * * *

The Master: I think you better make that the subject of another question. The question that was asked now was as to the result of the Wage and Hour Division investigation, and this is why you want to go into it, into the history of why it was established, make that a separate question, and then it can be objected to as a separate question and ruled on as a separate question. Don't now testify as to the history back of the establishment of that, but just tell what happened with respect to the Wage and Hour Administrator's investigation.

A. I think I can complete that part of it by stating that when Mr. Rifan convinced us we would be wrong on the matter, we promptly said we would be very glad to rectify it.

Q. (By Mr. Cooper) And how was it rectified?

A. It was rectified by going back over the records, picking up the items wherein an individual week had exceeded the 44 hours, even though the 2 weeks had not exceeded 88, and paid the time and a half to the employees for that period.

(Whereupon documents were marked Exhibits No. 81-A through J by the reporter.)

Q. (By Mr. Cooper) Can you say, Mr. Doll, whether

or not Exhibit 29 is the complete list of the employees whom payments were made at the time of this inspection?

Mr. Lamb: I think there was an objection to that before.

Mr. Cooper: That exhibit has been received. • • •

The Master: Exhibit 81-A is just one sheet here. It is 81-A through 81-J. Exhibit 29 consists of a number of sheets, Exhibit 29 through Exhibit 29-M.

What is the difference between Exhibit 81 and the subdivisions of that exhibit, and Exhibit 29?

A. The difference is—the two groups are exactly the same thing. The difference is that Exhibit 29 through Exhibit 29-M are the people who were paid in separate checks. It was understood and agreed that the small amounts less than $1 could be added on to the current pay at the time the settlement was made. That is a different group here (indicating).

The Master: By "this group here," you are referring to Exhibit 81 and its subdivisions?

A. That is right.

Q. (By Mr. Cooper) I ask you whether or not that was in fact done with reference to the individuals whose names appear on Exhibit 81 and its subdivisions?

A. It was. • • •

Q. (By Mr. Cooper) What record, if any, Mr. Doll, was made of the payments made to the employees whose names appear on 81 and its several parts? • • •

The Master: What did the Wage and Hour Division have to do, if anything, with the form of these records?

A. After we were in agreement as to the point that they had raised, they authorized us to go through the records, make the corrections in accordance with the 44-hour week, which we did, and presented it to them for their verification, if they so wanted, and they accepted our calculations without a further audit.

Mr. Cooper: I offer Exhibit 81-A in evidence, your Honor.

The Master: I think I will take that under advisement until I find out just what disposition was made of Exhibit 29. • • •

Q. (By Mr. Cooper) On what basis were the computations made which appear on Exhibits 29 and 81?

A. They were made on the basis that wherever an individual week exceeded 44 hours, that the excess number of hours were to be paid for at time and a half. • • •

Q. Whether or not that was in accordance with your instructions which you received from the Wage and Hour Division?

Mr. Lamb: Objection. That is the very thing, as I understand it, that has been ruled out.

The Master: I think he has already so stated. It is just repetition. I will sustain the objection.

Mr. Cooper: If that appears, that is all I wanted to make sure of. • • •

Q. (By Mr. Cooper) Was any request made by the Wage and Hour Division as to a change in the system of computing the hours of work?

Mr. Lamb: Objection. That is highly immaterial.

The Master: I will take the answer to that.

A. There was not.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Cooper) Can you state, Mr. Doll, why the individuals listed on Exhibit 29 appear to have affixed their signatures to the exhibits and the contrary appears to be true as to the individuals listed in Exhibit 81?

A. The ones that were paid by check signed these receipt blanks. The ones that had the amounts less than $1 added into the current pay, simply signed for the check for that particular pay without any particular reference to the amount added.

Q. Do you happen to recall, Mr. Doll, the total of all the various items listed on these two exhibits?

A. Approximately $1300.

Q. By the way, going back to a thing that was up a minute or two ago, can you state, Mr. Doll, why all, or

on what basis prior to the time of this inspection by the Wage and Hour Division overtime had been computed on a two-week basis?

Mr. Lamb: Objection. • • •

A. The principal reason for it and the individual cases in which we incurred the largest amount of overtime was where we had, at the request of and for the convenience of the employees, permitted them to work a longer week one time and a shorter week the other.

Mr. Lamb: I ask that the answer be stricken.

A. This was particularly true where the employees tried to lengthen out the week-end.

Mr. Lamb: I ask that the answer be stricken. • • •

Mr. Cooper: I offer in evidence, if the Court please, Exhibit 80 to 80-C. • • •

The Master: In view of the fact that an objection has been made, I will admit photostatic copies in place of the originals, Exhibit 80 and Exhibit 80-B, but I will direct you to produce photostatic copies of the others if you want to get those in evidence. • • •

Mr. Nunneley: For the purpose of examination and cross-examination, may they be used, with the understanding that a photostat will be substituted?

The Master: All right, you may do that. • • •

Q. (By Mr. Cooper) There has been some mention, Mr. Doll, some reference to the 51-52-53 plan. What was that?

A. The 51-52-53 plan is a plan by which during a period of 52 weeks of the year, we pay compensation to the employees equivalent to 53 weeks wages for 51 weeks work.

Q. Was there any agreement pursuant to which those two weeks' extra wages were paid?

A. There is none.

Q. By the way, did you personally enjoy the benefits of that plan, Mr. Doll?

A. I did not; the only employee who did not benefit.

• • •

Q. (By Mr. Cooper) What are the normal or regular number of hours of work per week in the Mt. Clemens Pottery during the period involved in this suit?

A. Well, the basic work period was 44 hours for the period from October, 1938, to October, 1939; 42 hours from October, 1939, to October, 1940, and 40 hours from then on.

Q. Did you have foremen's meetings held regularly in the pottery company, Mr. Doll?

A. We did.

Q. How often were they held?

A. Every Tuesday noon.

Q. And who attended?

A. All the foremen, department heads, officials and the office manager.

Q. Was there any discussion at those meetings as to the Wage and Hour law?

A. There were.

Q. Whether or not you issued any instructions to the foremen at those meetings with reference to the Wage and Hour Law?

A. As we approached each period of the change in the law, the supervisory staff was thoroughly instructed as to what was required by the law that we were to live up to it, and that people upon permission, employees were not to be permitted to work overtime.

Q. Have there been instances where upon permission employees have worked overtime?

A. Yes, quite frequently.

Q. Do you have any idea how many on the average instances of overtime work occur in the week?

A. Well, there were overtime payments made every pay. I wouldn't, of course, be familiar with all the isolated instances except for the fact that one of the regulations of our office is that they make a complete list of the overtime payments at the end of each pay by name and the number of hours overtime, and the amount paid out. One of those copies comes to my desk, and keeps

me familiar with the extent to which overtime is being worked and paid for.

The Master: You stated that employees must get permission before working overtime. Who do they obtain that permission from?

A. From the foreman, permission or authorization from him.

Q. (By Mr. Cooper) What would there be, one or ten or twenty employees who normally in the course of a pay will have received permission and worked overtime?

A. I would say that during the period referred to in this action, that there would probably be overtime from the standpoint of individuals, would probably vary from ten to twenty per pay.

The Master: That is for the entire plant?

A. That is correct.

The Master: And including both hourly workers and rate workers?

A. That is right. I am referring to the factory end of the plant.

Q. (By Mr. Cooper) By the way, was anyone ever laid off or fired for working overtime?

A. We have never had such a case.

Q. There has been considerable talk during the hearings here about a first strike and a second strike. Can you fix the dates, Mr. Doll?

A. The first strike began on April 14, 1941, and the second strike began on November 24, 1941.

Q. Did any of the demands made by the strikers at the time of either of those strikes relate in any way to the method of computing hours worked?

Mr. Lamb: Objection.

The Master: Well, first, were there any demands made to you by the strikers?

A. There were no demands made of any kind at either strike. • • •

Q. (By Mr. Cooper) Before the strike of April, 1941, how many years had it been since there had been a strike at this plant?

Mr. Lamb: Objection. • • •

The Master: All right, I will take this answer to this question, pursuant to Rule 43-C, excluding it on the grounds of immateriality, but just make a record of it so that any appellate court, or Judge Picard, if he considers it material, may take it into consideration. • • •

A. The Mt. Clemens Pottery Company has never had a strike since 1923. • • •

Q. In fact, have you ever had a wage dispute at the pottery during the last quarter of a century?

A. We have not. • • •

The Master: All right, we will go back on the regular record of the case.

Q (By Mr. Cooper) I notice going over your testimony when Mr. Lamb was examining you, Mr. Doll, that there were several questions about waiting time. Can you describe to the Court what is done with reference to computation of hours of work if a machine breaks down during the day?

A. If the machine breaks down for some short period, the employees stay in the department and do not ring out. If it is evident that the breakdown is going to be something of long duration, why, they ring out and leave the plant and come back at a stipulated time.

Q. By "long duration," approximately what period of time do you have in mind, Mr. Doll?

A. Say a period of an hour or more.

Q. Are you familiar, sir, with the geographical area in which the employees of the pottery live?

A. Our employees live generally within a radius of 10 miles of Mount Clemens and in the city proper.

Mr. Nunneley: That reminds me, I forgot to bring that map which your Honor requested.

Q. (By Mr. Cooper) Have you observed the practices of these employees, of getting from their homes to the plant? • • •

A. The employees that live at a distance generally arrange to pick up others who are working at our plant

and who live in the general vicinity or who may live on the route coming to the pottery, and to bring them along with them. It is quite customary for them to ride with full cars. • • •

June 19, 1942.

The Master: Well, in going back over the record here, I find that I have admitted Exhibit 29 without deciding its legal effect. I will do the same with the exhibit identified yesterday.

Mr. Cooper: Exhibits 81-A to J, I believe. • • •

Mr. Cooper: I would like to make one inquiry before we take further testimony and that is in the hope of expediting the completion of the defendants' proofs.

We have been unable to ascertain up to this point from our cross-examination of certain plaintiffs' witnesses as to who was the recording secretary of Local 1083, United Pottery Workers of America, during the period of March and April, 1941. Miss Freddle, who was on the stand, testified that at a subsequent period she was the recording secretary, but she did not advise us as to who her predecessor in office was. • • •

My only thought was if the plaintiff union can furnish us with that information it will, perhaps, reduce the number of witnesses we may otherwise have to subpoena. • • •

The Master: I wonder if you could examine the minutes, Mr. Lamb, and see if they would tell who the recording secretary is at that time, or was. The minutes are marked, just for the record, with the letters "A" and "B" on June 9, 1942, that are being referred to (handing documents to Mr. Lamb). • • •

Mr. Lamb: Martha Peters signed some minutes in—this is in August of 1941.

The Master: What about the minutes in March?

Mr. Lamb: The minutes in March were signed by Margaret Yochum, Y-o-c-h-u-m,—I think it is. • • •

ERNEST A. HARMS, was thereupon called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Harms?
A. In Mt. Clemens.
Q. You are employed by the Mt. Clemens—
Mr. Lamb (interposing): What is the street address?
A. 270 Jones.
Q. (By Mr. Cooper) You are employed by the Mt. Clemens Pottery Company?
A. Yes, I am.
Q. In what capacity, sir?
A. Right now I am a foreman.
Q. Of what department?
A. Brushing and dipping.
Q. How long have you been employed by the Mt. Clemens Pottery Company?
A. 13 years.
Q. That would be back around 1929, or so, that you started work?
A. About 1929, that is right.
Q. Have you held various jobs there since that time?
A. Yes, I worked on the bench for ten years; after that I became foreman.
Q. During the period that you were working on the bench, what type of work were you doing, Mr. Harms?
A. I was doing dipping.
Q. And then when was it that you became foreman?
A. In July, 1939.
The Master: Were you assistant-foreman before that?
A. No, I wasn't.
Q. (By Mr. Cooper) Before you became foreman you

were one of the regularly employed dippers in that brushing and dipping department, is that right?

A. That is right.

Q. Did you punch a time clock at that time?

A. Yes.

Q. You did the same sort of work as the other dippers did?

A. That is right.

Q. Since becoming a foreman, have you continued to punch the time clock?

A. Not since I have been a foreman.

Q. During the period from October, 1938, to April, 1941, Mr. Harms, can you tell us approximately how many employees were engaged in the brushing and dipping department?

A. About between 95 and 100.

Q. Is there more than one shift in that department, or just one shift?

A. There are two shifts.

Q. Do the shifts have different starting times?

A. Yes, the day shift starts usually at 7:00 and the other shift starts, the night shift starts at 9:00 or 10 o'clock, depending on the production needed.

Q. The starting time of the latter shift varies somewhat to different periods?

A. That is right.

Q. According to what factors?

A. According to the production.

Q. Is the regular starting time of the earlier shift more fixed?

A. Yes, that is all about 7 o'clock.

Q. During the period in which you have been foreman of the brushing and dipping department, and up until April, 1941, what time did you customarily arrive at the plant in the morning?

A. I usually get there an hour before starting time.

* * *

Q. (By Mr. Cooper) During this period you have been

foreman, Mr. Harms, what do you customarily do after arriving at the plant?

A. I usually go in the department and take care of my time and see that things is in order for starting time. Occasionally I am out at the time clock.

Q. By the way, referring to Exhibit 30-A, can you point out what time clock the employees in the brushing department and the shipping department use?

A. (Referring to Exhibit 30-A) This is the south time clock, this is the north time clock. The south time clock.

The Master: They use the south time clock marked on the chart as time clock "B"?

A. That is right.

Q. (By Mr. Cooper) During most of the period prior to April of 1941, were there one or two time clocks at the point marked on Exhibit 30-A as time clocks B?

A. There were one.

Q. Do you know, Mr. Harms, whether or not other departments also starting at 7 also used the same time clock?

A. Yes, I do.

Q. What departments would they be?

A. They would be the chipping department, the boiler fireman, the maintenance, and the kiln crews. And there would be gloss unloading and loading.

Q. Have you had occasion—

The Master (interposing): Pardon me, Do you know about how many men in all of these departments used the time clock at 7 o'clock, or just before 7?

A. Yes, about 200 or over. • • •

Q. (By Mr. Cooper) Have you had occasion from time to time to observe the group of employees which has just been referred to while they were punching in at the time clock at this period from 14 minutes to 7 to 7 o'clock?

A. Yes.

Q. Can you state from your observation about how long it would take that group to get through the time clock?

A. It would take them about nine or ten minutes to pass the clock.

The Master: At the time clock B on the 7 o'clock shift, do the employees go in and punch the time clock by departments, or do different departments intermingle?

A. They fall in line just as they come in.

The Master: Regardless of what department they come from?

A. That is right.

Q. (By Mr. Cooper) Now, are there employed in the brushing and dipping department certain individuals known in the trade as brushers?

A. That is right.

Q. Are there also dippers?

A. That is right.

Q. And are there also spongers?

A. That is right.

Q. Does the work of the brusher and the dipper and the sponger bear any relationship from one to the other?

A. Yes, it does.

Q. Could you describe to the court what that process is?

A. Well, in the first place, the brusher has to be there in order to brush the ware for the dipper. The dipper can't dip it unless it is brushed, and the sponger can't sponge it unless the dipper dips it. One can't work without the other.

The Master: When the ware comes into your department, how does it look?

A. It is in the bisque stage and it is dirty. It has to be brushed, brush the sand off.

The Master: Is there sand on it?

A. Yes.

The Master: Are there also imperfections that you can chip off as well as brush off?

A. That is right.

The Master: Does the brusher do both the loose sand and so on?

A. The loose particles off, and they have a little grinding stone that they grind it off, unless it is too bad, and then they send it out.

The Master: And the operation performed in your department is putting the glaze on the ware?

A. That is right.

The Master: So that the brusher first brushes the ware off, cleans it up, and then the dipper dips it in a solution which has the glaze?

A. That is right.

The Master: Then it is turned over to the—who is the third operator?

A. The sponger.

The Master: And what does the sponger do?

A. She sponges the bottom off so that it doesn't stick onto the sagger.

The Master: Sponges the bottom off?

A. Sponges the bottom off of the cup; that is on cups. And on the flat, of course, the girl sets them on and it goes out as it is.

The Master: Are the spongers all girls?

A. Yes, sir.

The Master: And the brushers?

A. All girls.

The Master: What about the dippers?

A. Men.

The Master: All men?

A. That is right.

Q. (By Mr. Cooper) Let me ask you, then, Mr. Harms, whether or not these three persons can start work unless they are all there?

A. They have to all three be there.

The Master: Let me ask you this in that connection: can there be an accumulation of work turned out by one of these parties? For example, can the brusher in the preceding day pile up a lot of ware that he has brushed ready for the dipper to go to work on?

A. No, because at the end of the day it is all pounded in. It is turned in, and they work right up and they never have any left over.

The Master: During the day can the brushers get ahead of the dipper?

A. Well, he probably could through the day a little, but there would be none left over.

The Master: As to the sponging operation, does that have to follow the dipping operation in order to do an effective job of sponging, or can that ware be piled up a little bit?

A. That cannot be piled up. It has to be done immediately after it is dipped.

Q. (By Mr. Cooper) Is there a certain bench or other place, Mr. Harms, where the dish is placed after it has been brushed and before the dipper picks it up?

A. That is right. It has to be brushed and put onto a bench.

Q. Is there sufficient room on the bench for a considerable quantity of the ware to be piled up before the dipper starts taking it out?

A. Well, in the first place, the dipper does not take it off of there. It is picked up by somebody else after the brusher gets through with it, and put onto a table, or to a truck, rather, and put over onto the table.

Q. And brought over to the dipper by truck?

A. That is right.

Q. And then does the dipper work directly off the truck, or is the ware taken from the truck and put on another bench?

A. I believe I have got the two confused. Speaking of the one operation as the cast ware and cups, and the other is the flat ware. There are two different classifications there now. If you are speaking now about the cast ware and the brushing girls, or cast ware and cups, that is one thing, and on the flat ware is another.

Q. What is the situation as to the cast ware and cups?

A. The situation as to the cast ware and cups, that is brought in in boxes and the girl has to brush them and put them onto the table. The dipper takes it off of the table, puts them in the tub and dips them, and the girl on the other end of the tub sponges them and puts them onto the truck.

Q. And what is the situation as to the flat ware?

A. The flat ware, the girls brush it and put it onto the table, and another fellow picks it up and puts it into a truck and wheels it over to the dipper, and they dip it right out of the truck.

Q. And what does the sponger do?

A. On the flat ware?

Q. On the flat ware.

A. They do not sponge flat ware.

Q. What does the sponger do on the cast ware and cups?

A. They sponge them and put them onto a truck, and we have a man to wheel those out.

Q. How long a period can elapse between the time a piece of ware is dipped and the time it is sponged?

A. Well, it couldn't be over a couple of minutes.

Q. What would happen to the ware if it were allowed to sit more than a minute or two after it had been dipped and before it was sponged?

A. Well, the glaze on it would become crystal-like and it would chip off the ware. The girl wouldn't be able to handle it. The moisture would be gone out of the glaze, and the ware, and the glaze would become dry and it would just go off, peel off, rather, wherever they would happen to touch it.

Q. During the period that you have been foreman, Mr. Harms, are you ordinarily in the department at the regular starting time for the 7 o'clock shift?

A. Most of the time, yes.

Q. And is that also true with reference to the shifts that come in later?

A. That is right.

Q. On the basis of your observation what would you say as to whether or not the employees begin actual work before the regular starting time?

A. I would say they do not start before the regular starting time.

The Master: By "actual work" are you referring to production work or do you include, also, the job of getting tools ready and also other things ready for production work?

A. I mean by getting ready for production.

The Master: You mean they don't even start getting ready for production until—

A. (Interrupting) They get ready for production, but there is no production started—most times after 7. Once in a while, occasionally, it might be or one might have a piece or two dipped before the whistle, or something like that, but not very often.

The Master: Do you have a whistle at 7 o'clock?

A. Yes.

The Master: Has that been true all during that period?

A. Yes.

The Master: That is from 1938 on down to the present date?

A. That is right.

Mr. Lamb: With reference to the whistle, is that in that department or plant?

The Master: Is that a plant whistle or a whistle in the department?

A. A plant whistle.

Q. (By Mr. Cooper) On the basis of your observation, Mr. Harms, what does an employee do between the time he gets into the department and the time actual production begins?

A. Well, in the first place they get in there and they grease their arms with vaseline and put on some finger cots, look around for their apron, and occasionally take a chew of tobacco before they start. Sometimes some of them change shoes.

The Master: Incidentally, do those practices apply to the three types of employees that you have in your department, or do some of them vaseline their arms and others not?

A. Some do and some don't.

Mr. Lamb: Some take a chew of tobacco, I presume, and some don't.

The Master: I mean between different classes, that is something the dipper has to do?

A. The male greases their arms and the female doesn't.

The Master: How about the finger cots?

A. All use those.

The Master: All three classes of employees?

A. That is right.

Q. (By Mr. Cooper) What has been your observation, Mr. Harms, as to how steadily the employees worked during the morning after the production does get started?

Mr. Lamb: Objection. That calls for a general conclusion.

The Master: I don't think it is very material, but it may round out the picture of the operations at the plant. I will take the answer.

A. What is the question?

(The question was read.)

A. They don't work all the time. There is periods where they are not doing anything.

The Master: May I ask this; do the defendants make a claim that you are entitled to deduct the time that the employees, for example, go to the toilet during the day and not compute that in the working hours of the employees?

Mr. Cooper: It is our position, your honor, that in the case of these piece-workers they are entitled under the law to put in 2400 minutes a week of productive work.

The Master: You make a definite distinction then between the way the law applies to piece-workers and the way the law applies to hourly workers?

Mr. Cooper: Yes, your honor. * * *

Q. (By Mr. Cooper) Do the employees ever make lemonade, or anything of that sort, during the day?

Mr. Lamb: Objection. * * *

The Master: It does sound rather leading; on the basis of that objection I think I will sustain the objection.

Q. (By Mr. Cooper) How do the employees spend their time during the day?

A. Well, they spend it in the dressing-room or eating candy.

Q. You mean what part of their time is so spent?

A. Oh, I see. I don't just quite get—I just don't understand the question. • • •

Q. (By Mr. Cooper) And how steadily do they continue doing the dipping, or whatever job is assigned to them?

A. They don't dip every minute. There is a lot of times, as I say, they go to the dressing-room and eat candy and change their glaze, and if they happen to meet somebody or have a little talk with them, or something.

Q. Any other incidental activities that you have seen them engage in during the day, outside of their regular work?

A. Well, they objected to the question you asked me, but I did of my own observation see them make this soft drink when they were supposed to be working, because I have had some of it myself. • • •

The Master: Was this on one occasion or did this happen a number of times?

A. Frequently, more than once.

The Master: During the period of October, 1938, to April, 1941?

A. That is right.

The Master: Each year, or one particular year?

A. In the last in particular I never—the last year I didn't observe anybody doing that, because I was too busy at other things and I didn't watch them close enough, but I know they did eat candy and they did stop on the way back from the dressing-room and talk with whoever they wanted to. • • •

Q. (By Mr. Cooper) Have you ever observed, Mr. Harms, whether or not one of these three-men crews, I should say three-person crews, finishes their work before the quitting time?

A. They all do.

Q. Could you describe to the Court the general situation with reference to the finishing up of work in the day and quitting time?

A. Well, in the first place, if they are supposed to quit at 3:30, or 4:30, whatever the time would be, say, for instance, four o'clock, they would stop ten minutes to, the dippers would wash the tub and the girl probably wash the pail off she used; they would stall around there until the time was four o'clock, then they would go out with the rest. A great many times they would get out to the clock and wait there until it would be four o'clock before they would punch it, sometimes five or six minutes.

Q. On the basis of your observation both as an employee and as a foreman, both as a journeyman and as a foreman, can you tell the Court how the company's computation of hours worked compares with the amount of time that an employee is actually doing productive work?

Mr. Lamb: Objection.

The Master: He may answer.

A. They are taken off on the time cards, computed by the time cards.

Q: Are you familiar with the method by which the company's computation of hours worked is taken off of the time cards?

A. They are not given to—they are only given credit for the hours worked and they are not working any more hours than they are given credit for.

Q. If an employee punches in the time clock at any time between 14 minutes to 7:00 and 7 o'clock, as of what time is he listed as having started work, according to the company's computation?

A. 7 o'clock.

Q. And if he punches out at the end of the day at any time between one minute after 3:00 and 14 minutes after 3:00, what time is he figured as having quit work?

A. He is paid up until 3 o'clock.

Q. Under the company's computation, is any deduction made from hours of work as so computed, because of any non-productive time the employee might have spent during the day?

A. There is not. There is no deductions.

Mr. Lamb: Objection to the question.

The Master: I will take the evidence on it. Will you describe, Mr. Harms, just what the dipper does when he gets in the department in the morning after he has punched in the time clock and got into the department?

A. It takes him, after he has punched the clock, about two minutes to get in there.

The Master: I beg your pardon?

A. It takes him, after he has punched the clock, two or three minutes to walk in there to the job. Then, as I said before, he has to grease his arms, put on his overalls; some of them wear a rubber belt—rather, apron, I should say; put that on on top of the overalls.

The Master: Do they all wear overalls?

A. Some do and some don't.

The Master: About what proportion?

A. I would say about 98 per cent of them wore overalls.

The Master: Do they take their clothes off and put their overalls on?

A. Put their overalls on right over the top.

The Master: Then those that wear aprons put aprons on?

A. That is right.

The Master: About what proportion of them wear rubber aprons?

A. I would say about two out of the whole group wore aprons.

The Master: There are very few wear aprons?

A. That is right.

The Master: And what does the dipper do?

A. Greases his arms, puts on his finger cots, usually has a talk with the other fellow about what happened the night before or whatever they might be talking about. I never listened to it, but they were talking about something.

The Master: Does the dipper have any tools he uses in his work?

A. No tools, outside of the finger cots. No tools.

The Master: The dipper, you say, dips the ware into a solution which puts the glaze on the ware. Is that solution in permanent tubs or is it in movable tubs?

A. It is in movable tubs.

The Master: Does the dipper have to do anything to get those tubs ready in the morning?

A. The tubs are there in the morning as he comes in.

The Master: Are they in a position to use them?

A. That is right. Occasionally they might be an inch or two out of the way and he might have to move it one side or the other. That happens about once a month.

The Master: Are the tubs cleaned up and in condition to start work, or does he have to do anything to them?

A. The tubs is in condition to go to work, except they have to take the water off and stir it up. * * *

The Master: Does he take a stick and stir it up then?

A. That is right.

The Master: Then, after completing those tasks, is the next step dipping ware?

A. That is right.

The Master: Is there anything else you can think of the dipper does in the morning?

A. He doesn't stir this mix or take the water off before seven o'clock. This stirring or mixing and taking the water off happens after 7 o'clock.

The Master: You include that in production work?

A. That is right. * * *

The Master: Now, is there anything else you can think of that the dipper does in the morning?

A. That is all he does.

The Master: Does he repeat the same process when he comes back in the afternoon, after going out to lunch?

A. That is right. * * *

The Master: Will the dippers take their overalls off when they go out at noon?

A. They take their overalls off at noon when they go out.

The Master: The process that is followed by the dippers when they come in in the morning is exactly the same as the process when they come in in the afternoon after going out to lunch?

A. That is right.

The Master: Now, will you describe what the dipper does when he gets through dipping as the noon hour comes along, or the noon half-hour, and up until the time that he punches the time clock out, in going out to lunch?

A. Usually we quit about 12. Between eight and five minutes to, they begin to take off their finger cots and work without them. They wash their arms. They get a clean pail of water to wash their face. And at the gong, they are ready to go. The overalls, there is one strap thrown over the shoulder and one strap on, and as the gong goes, they are gone.

The Master: Where do they put the overalls?

A. They leave them there.

The Master: On the floor?

A. They have posts or pillars around there with some nails in; they hang them on there.

The Master: Do they have to do anything to the glazing solution when they leave?

A. Not a thing.

The Master: Do they have to do anything to the tub which contains the glazing solution?

A. Not a thing.

The Master: They don't clean that out at noon?

A. No, they do not.

The Master: When they leave at night, is the same process followed?

A. At night the same thing is followed, only they clean up the tub. They pull it out from the position they have been working that same day, pull it out and they wash it up around the outside, and they usually start at ten minutes to, to do that.

The Master: And the duties you have given, does that apply to the period from October, 1938, until April, 1941?

A. It does.

The Master: Or is that at the present time?

A. All times.

The Master: Would you describe, briefly, now, the operations carried on by the brusher when she comes in in the morning and leaves at noon, and then comes in in the afternoon and leaves in the afternoon?

A. She comes in in the morning. She is usually the last one in there. And, she has to put in finger cots, and find her brush. This is on the cast-ware, I am speaking about now. She has to find her brush.

The Master: Incidentally, in that connection, when you were testifying as to what the dipper did, were you speaking of cast-ware?

A. Cast-ware, yes.

The Master: How does the process differ?

A. It is the same as the flat-ware with the dippers.

The Master: It is the same as the flat-ware with the dippers?

A. Yes, but the brusher is different. The brusher gets everything ready, and after the whistle blows she starts to brush.

The Master: Just describe specifically what steps she takes in getting ready?

A. Well, they congregate there, at least four or five of the brushers, they are deciding—I don't know what they are deciding,—but they stand there and talk and they have their finger cots to put on, too, and they get their brush, and they stand there and talk until the whistle blows, and when the whistle blows they start to brush.

The Master: Do they have to do any work in getting the table or bench ready to work on?

A. Occasionally the bench they worked on the night before might be pushed to one side, and they might have to push it over to them to get the ware on them.

The Master: Do they have to go and get the ware any place?

A. They do not. It is brought to them. If the night man doesn't leave any for them, if there is no ware there to start out with, they wait there until a quarter after or ten after, whatever the time happens to be, until the trucker brings it to them.

The Master: These conversations they carry on, do you know whether those are social conversations or conversations pertaining to their work?

A. I never get close enough to them to hear it, because that is my busiest time in the morning to see that everything gets started.

The Master: So, you don't know what they talk about?

A. I do not.

The Master: What do they do when they leave at noon?

A. They stop brushing, and they take off their cots and their aprons and just walk around there until the whistle blows again, and they go out.

The Master: Do the brushers put on any kind of overalls or slacks over their dresses?

A. They do not. They wear an apron.

Q. How does the process differ—or, in the first place, do they follow the same procedure in the afternoon?

A. That is right.

The Master: Is there any extra clean-up job they have to do in the evening when they leave, or in the afternoon when they leave, that they don't have to do when they leave at noon?

A. Not for the brusher.

The Master: How does the process differ when they are working on flat-ware?

A. Well, when they are on flat-ware, of course, they have their finger cots, and they have tape on their hands, and they have—most of them change shoes. I wouldn't say most of them. Some of them change their shoes. And, they have their aprons off before they go out, and they have their finger cots off before they go out, and as soon as the whistle blows they are ready all together at the same time.

The Master: They just change their shoes on the flat-ware, not on the cast-ware?

A. That is right. I would say, to be exact, that the girls that stand up and brush the flat-ware, they are the ones that change their shoes. The ones that sit down, they don't so often change.

The Master: Now, with these spongers, will you describe what their operations are when they come in in the morning up until the time they start what you call production work?

A. Well, they come in in the morning and they have a talk with the brusher, and they talk until about 7 o'clock, and they wait until the brusher gets started, or until the whistle blows, and they have a pail, they have water in order to sponge the ware, and they go over and get their pail of water.

The Master: You mean they go over and get it after seven o'clock?

A. That is right, because the girl starts to brush at 7:00 and she puts the ware on the table at 7:00, and the dipper starts at 7:00, and the girl by that time goes after her pail of water, and it takes her a few minutes to get back.

The Master: Do they have to change their clothes or put any extra clothes on?

A. They put an apron on; that is all.

The Master: Where do they get the aprons?

A. They have their own.

The Master: Where is it kept?

A. It is pretty hard to tell where it is. Sometimes, where they forget sometimes where they put it, they have to look for it, but they usually try to put it on the job they left.

The Master: Do they change their shoes?

A. Not always.

The Master: Sometimes?

A. Sometimes they do.

The Master: Put rubbers on over their shoes?

A. No. They just change the whole shoe.

The Master: What about the sponges, do they have to get those ready?

A. No, the sponges don't have to get ready.

The Master: What if the sponge is worn out?

A. They will tell me that before they go out at night, or if they don't tell me they will have to wait in the morning until I get them another one.

The Master: Are they supposed to get the sponges if they are worn out before 7 o'clock?

A. Well, that is up to them. If they do, why, okay, and if they don't, it is okay too. Usually I try to be around and check them myself, and if they need them as a rule they will tell me at night. There is none of them too bad they can't use to start out with.

Mr. Lamb: Did he say he got the sponges for them?

A. That is right.

Mr. Lamb: You go to the stockroom and get them?

A. That is right.

Mr. Lamb: Then they sign some slip?

A. No, they don't sign any slip.

Mr. Lamb: How do you keep a record of who to charge the sponge to?

A. I don't keep any record.

The Master: All right, go ahead.

Mr. Lamb: Aren't the sponges paid for by the employees?

The Master: I will let him answer this question.

Mr. Lamb: I didn't want to interrupt; I was following through the Master's query because I didn't understand particularly.

A. This is the rubber sponge that my girls use and they are not charged to them. • • •

Q. (By Mr. Cooper) I would like to ask a few more questions on the matter we were on a little while ago with reference to the computation of hours worked. Do you know, Mr. Harms, how long the method of computing

hours worked, as you have described it, has been used out there at the Mt. Clemens Pottery Company?

Mr. Lamb: Objection.

The Master: I will take the answer.

A. It has been used ever since the time clock has been installed out there, about seven or eight years at least.

Q. (By Mr. Cooper) That method then was used during this period up to July, 1939, when you were working there as a dipper?

A. That is correct.

Q. When you pick up your time card during the day, during the period when you were employed as a dipper, would there be anything on it that would show you how many hours the company figured you had worked?

A. It would be marked over on the right-hand side of the card the hours that you had worked.

Q. How did that computation compare with the amount of time that you actually worked?

Mr. Lamb: Objection. • • •

The Master: Can't you break your question up and ask the time he went to work, what time he started in the morning, what time he quit at noon, and what time he went to work in the afternoon again, and the Court can draw the conclusion whether that amounts to more time or less time than the company has credited him with?

Mr. Cooper: Very well.

Q. (By Mr. Cooper) During the period you were employed as a dipper, Mr. Harms, what time did you generally ring in at the time clock in the morning?

A. I was usually the first one in and I was usually the first one out at night. I used to punch in there I would say at 14 or 13 minutes to, and I would go in there and I would get ready, but I would never be able to start or never would start before the whistle blew at starting time, 7 o'clock.

Q. And what was the situation in your own case as to the time that work was stopped at lunch time? • • •

A. It would be the same thing at the lunch hour; I

would take off my cots and my apron and I would say about three or four minutes to the hour, and by the time the whistle blew I would be ready to go. • • •

Q. (By Mr. Cooper) And what time would you actually start work again after lunch?

A. I would start, if we were starting at half past 12, I would start at half past 12; if we were starting at 1:00, I would start at 1:00.

Q. What time did you quit work at the end of the day?

A. At the end of the day would be the same thing. Usually I would quit at ten minutes to, at the end of the day, allowing me enough time to wash up, and a lot of times I would be washed before 3:30 or 4:00, whatever the stopping time was, and I would wait until it was time to go out to the clock, four o'clock, or 3:30, whatever it happened to be.

Mr. Lamb: Do I understand you always punched the time clock exactly at 4:00?

A. After. • • •

Q. (By Mr. Cooper) Whether or not when you were a dipper you worked more than eight hours a day, when according to the company's method of computation you had worked eight hours?

Mr. Lamb: Objection to the question.

The Master: He may answer. • • •

A. I was always given the time for what I worked. If it was more than eight hours, I was given credit for it. If it was less, there was never any taken off the hours I worked. I always received the full credit. • • •

Q. (By Mr. Cooper) Have you ever seen any employees in the dipping department ring out their time clocks and then go back to work?

A. I did not.

Q. Do you know whether or not during the period involved that was done?

A. It was not.

Q. Did you ever attend foremen meeting, Mr. Harms?

A. Yes, I did.

Q. How often would they be held?

A. They were held once a week.

Q. Who was in charge?

A. Mr. Doll, Sr., was in charge of the meetings.

Q. Did Mr. Doll have anything to say about the Wage and Hour Law at those meetings?

A. Yes, he did.

Q. And what would he say?

A. He would inform us that the law had went into effect, that we were only to work 40 hours a week and not to work overtime without permission, and in the case of emergency. At one time the limitation was 44 hours, then 42, then down to 40.

Q. Can you say whether or not, so far as the brushing and dipping department is concerned, those instructions were followed out?

Mr. Lamb: Objection. • • •

The Master: I will make this ruling, that it is my opinion that the question calls for a conclusion, but since it is a hearing before a Master I will take this testimony subject to the objection.

Will you answer the question?

A. Yes. • • •

Q. (By Mr. Cooper) Are there certain machines employed in the brushing and dipping department in addition to the hand-operation?

A. Yes, there is.

Q. How long have there been machines in there?

A. Since 1939.

Q. With reference to employees employed on those machines, what if any preparatory operations does that employee have to make in order to get the machine ready to start in the morning?

A. There is an individual operator for each machine and he has the handling, and he is in charge of that to have it to turn by 7 o'clock, and if it doesn't run before 7 o'clock the other employees can't do anything until the machine is started.

Q. Before you became a foreman did you work any place near Steve Anderson?

A. Yes, I did.

Q. Did you ever have any particular observation or recollection as to what Steve Anderson would do if he arrived at the brushing and dipping department before 7 o'clock, or before the regular starting time? • • •

Mr. Lamb: There is an objection, and I ask that the record show that the answer be stricken when it is given. • • •

A. Yes, Anderson would come in there, he wasn't usually—wouldn't get in there many minutes before 7 o'clock, and when he did get in there he followed the same procedure the rest of them did, put on his finger cots—greased his arms first and put on his finger cots, and him and two other fellows, they used to buy Copenhagen on shares, and they used to leave it in the department, and occasionally it would get knocked down and roll somewhere else, they would have to find that and pass that around and visit with some of the other employees near him, and by 7 o'clock he would be almost ready to go to work.

Q. What is this Copenhagen that you refer to?

A. That is snuff, or Copenhagen; it is a tobacco of some kind, I don't know just how it is made or what it is. I have used it as snuff, I never chewed it, but they chewed it.

Mr. Lamb: It dropped on the floor every day?

Q. (By Mr. Cooper) Do you remember particularly whether or not Steve Anderson used vaseline or grease on his arms?

A. He did.

Q. Regularly?

A. Yes, sir.

Q. Or just occasionally?

A. Regularly.

Q. Now, did you ever have particular occasion to observe Lillian Socia come into the department to go to work?

A. Yes, I did.

Q. Can you state whether or not there were certain preparatory operations which she customarily engaged in before starting work?

A. She would first stand out by the clock and talk a little bit after she had punched in, and she would walk in slowly. She would get in there and she would pick out a certain chair or stool, rather, to sit down and brush on, and she would go and get her brush. Then she would find a pillow and fluff that up before she sat on it. Then she would get some tape—I don't know whether she had eczema or what it was, on her arms, but she required a lot more attention than anyone else in there. She would have tape way up to here (indicating). It was almost proud flesh at times, I don't know what it was, but she had to put a gauze on that first and put a tape on top of that.

Q. Was that a frequent or infrequent thing?

A. Every day.

Q. Do you have any idea whether that is something that could be done in a minute or two?

A. It can not be done in a minute. In the first place, she would not bring her tape in. She would get the tape from what the company furnished, and the tape would only be furnished for the girls on the machines, because they handle a little bigger ware and they was allowed tape to tape their fingers with. Otherwise their finger cots would wear out often. She would have to wait before four girls would get through with that, and it was already after 7:00 before they were all taped up before she would get it—pardon me, I mean to say it was 7 o'clock before the other girls would get through with it, before she could get it to tape her hands.

Q. How long would it take her to tape up her hands in the method you have described?

A. Well, when she would come in there, she wouldn't wait by these girls that used the tape. She would put her finger cots on and she would fuss around with the other stuff, and if it was before seven, she would wait until the whistle blew, then she would probably brush a few

pieces, and get up and get the tape after they were through with it, after seven o'clock. She couldn't get it before seven and she would have to stand there and wait before they were through. It takes them till seven to get through with it.

Q. Have you had occasion to observe her while she was putting the tape on her hands and arms?

A. Lots of times I have helped her.

Q. About how long would that take?

A. I would say it would take about three or four minutes. • • •

Cross Examination

By Mr. Lamb:

Q. Mr. Harms, you are the man they call the most hated man in the Mt. Clemens Pottery Company, isn't that correct?

Mr. Cooper: Objection. It is not a proper question.

• • •

The Master: I think you should restate your question and make it more specific. • • •

Q. (By Mr. Lamb, continuing) Mr. Harms, are you familiar with the fact that a committee of workers has called on the management of the Mt. Clemens Pottery Company and in that connection referred to you as the most hated man in the plant?

Mr. Cooper: Another objection on the ground it assumes something as to which there has been no evidence.

The Master: No, it doesn't assume it because it asks him whether that is so. If he says it is so there will be some evidence on that.

Mr. Cooper: If it is so understood I will have no objection.

The Master: I will take the answer.

A. No.

Q. (By Mr. Lamb, continuing) You were made a foreman in July of 1939, is that your testimony?

A. That is right.

Q. You say now that you usually get there an hour before starting time, is that correct?

A. That is right. About an hour ahead of the starting time.

Q. Do you punch a time clock card now?

A. Not since I have been a foreman.

Q. You were, then, from 6 o'clock roughly to 4, or do you stay after work, too?

A. If there is something I want to do after 4 o'clock I stay and do it, and if there isn't anything to do, I will go at 4. If everything is done and I want to go at a quarter to, why, I will go at a quarter to.

Q. Quarter to 4?

A. Yes.

Q. You leave before the employees, do you?

A. The employees leave at 3:30.

Q. Then, you say you usually stay at least 15 minutes after the employees have all left?

A. Yes, fifteen minutes or half hour, depending on what I have to do and want to do.

Q. So, roughly, you work some 9½ hours a day, is that right?

A. About that.

Q. You are paid on the weekly basis?

A. That is correct.

Q. How much are you paid?

Mr. Cooper: Object to that as immaterial. . . .

The Master: I am not allowing it to be asked now. If it weren't for being a matter that the individual question might be considered confidential, apart from it being material to the lawsuit, I would take the answer subject to the objection.

Q. (By Mr. Lamb) You are the foreman of the brushing and dipping department; is that one department or is that two departments?

A. That is one department, but both operations are done in the one department.

Q. Do you have an assistant foreman?

A. I don't.

Q. How many persons are employed in the brushing and dipping department?

A. You mean about at that time—between 95 and 100.

Q. At what time, I said "are"; up to at least April, 1941, how many employees were there?

A. About 95 or 100.

Q. Now, these employees use time clock "B," is that correct, on Exhibit 30-A?

A. That is correct.

Q. What other departments use time clock "B" on Exhibit 30-A?

A. This department (indicating)—

Q. (Interposing) Read them out; the packing.

A. The packing and the storage, the dipping and the boiler and engine room, the gloss unloading; the sagger filling—that means the loaders, doesn't it—the sagger fillers, and the chipping and selectors.

Q. The employees in the glaze room?

A. That is right, the glaze room, the maintenance.

Q. Can you advise us how many employees use time clock "B" prior to 7 o'clock in the morning?

The Master: Just to get this clear, you mean for the shift that is designated as the 7 o'clock shift, or do you mean prior to 7 o'clock, including 6:45, 6:30 and 6:15?

Mr. Lamb: No, I mean without prejudice to the fact that we deny there is such a thing as a 7 o'clock shift, how many employees use time clock "B" between 6:46 and 7 in the morning?

A. I would say on the average of 200.

Q. (By Mr. Lamb) On the average of 200, and do you have knowledge of how many use time clock "A"?

A. I don't.

Q. Now, the whistle that you refer to is a plant whistle that blows at 7 o'clock?

A. That is correct.

Q. And does it blow again in the afternoon, or at lunch time?

A. It blows at 12 at the lunch hour and it blows again when they start after lunch and it blows at quitting time.

Q. What time?

A. If we quit at 12 it blows at 12 and if we start at 12:30 it blows at 12:30.

Q. Does it change from day to day?

A. No.

Q. In other words, if it doesn't change from day to day it blows at 12?

A. That is correct.

Q. And at 12:30 every day?

A. Yes.

Q. What time in the afternoon?

A. I would say at 3:30.

Q. 3:30. Well, now, do I understand from your description of these activities that the employees in your department that quit at 3:30 have taken off their finger cots, possibly taken off their aprons, and checked out at 3:30, is that right?

A. Yes.

Q. They all check out exactly at 3:30, is that right?

A. Not exactly at 3:30; at 3:30 they go out and whatever time it takes them, if it is 2, 3 or 4 minutes after.

Q. So that all of your time clock cards will show that your employees checked out at 2 or 3 minutes one side or the other of 3:30, is that correct?

A. Well, I was never there when they all went out; if someone happened to stop on the way, I don't know what he was doing, if he got out 14 minutes after.

Q. 14 minutes after what?

A. Instead of 3:30 it would be before 16 minutes to 4, it would be all right.

Q. Up to 3:34, is that right?

A. If he stopped on the way and talked, I didn't follow him out there.

Q. So we haven't any time clock card that will show that the employees checked out at 4:12 or 4:29, that never happened, that the employees have a varying time of leaving?

A. Yes, in the case of a break-down, they would go out fifteen minutes earlier, if there was nothing to do.

Q. And do they sometimes work later, to 4:14?

A. Yes, the next day if everything is O. K. they would make that 15 minutes up.

Q. I see. Well, then, will you generalize some more as to what the time clock cards will show for the employees in your department, as to the time that they leave? You have now said it will be within two or three minutes one side or the other of 3:30, is that right? • • •

The Master: I don't think he said that. He said normally it would be two or three or four minutes after 3:30. Then he said there were exceptions to that. • • •

Q. (By Mr. Lamb) Do some of the employees punch out a minute or two ahead of 3:30?

A. Not to my knowledge.

Q. Well, do they work up to the time that the whistle blows and then take off their jackets and make a beeline for the time clock?

A. Most of them has got everything off at the time the whistle blows.

Q. I see.

A. And all they have to do is walk on out.

Q. Walk out to the time clock and punch it?

A. That is right.

Q. And you say that usually takes two or three minutes?

A. About that. Of course, if they stop on the way, I don't know how long it takes some of them. It shouldn't take over two or three or four minutes to get out of there.

Q. Well, are these employees in the brushing department usually piece workers, too?

A. That is right.

Q. Workers on a piece rate?

A. Yes.

Q. Will you indicate on this Exhibit 30-A where a majority of the employees in the dipping and brushing department are?

(Witness indicating on exhibit.)

Q. Right under the word "dipping?"

A. That is correct.

Q. Then when they leave, they walk down what is marked a yellow line across this bridge?

A. That is right.

Q. Under the word "sagger?"

A. Yes.

Q. To time clock B, is that right?

A. Yes.

Q. Whereabouts are the employees of the brushing department located?

A. Same place.

Q. Also under the word "dipping," is that right?

A. Yes.

Q. I will hand you what has just been given me by Mr. Cooper, being Exhibit 16-B, 11-B, 13-B, 10-B and 8-B.

Mr. Cooper: I think Mr. Lamb has been reading the court reporter's initials.

Mr. Lamb: Well, they are not all of those exhibits, are they? Weren't there a series of numbers on them?

Mr. Cooper: They are single exhibits.

The Master: These would be Exhibits 8, 10, 11, 13, and 16. I assume on each of these exhibits there are a great many sub-numbers that we don't have here.

Q. Are these all employees in the dipping and brushing department of which you are foreman (handing time cards to the witness)?

A. No.

The Master: Which ones of them are in the dipping and brushing department?

A. Those are, and this one is not (indicating).

Q. (By Mr. Lamb) That is, Exhibit 8, Leo Stafford is not in the dipping and brushing department?

A. He is not.

Q. Well, with reference to the other exhibits, 10, 11, 13 and 16, being the time cards of Clarence Burgess, Nelson Luchtman, Luella Rohrbeck and Mary Sawicki, those employees, at least, are in the brushing and dipping department?

A. That is right.

Q. Will you show me any day on any one of those cards of any one of those employees where they have checked out at 3:30?

A. (After examining exhibits): None on there.

Q. Do you know what department Leo Stafford works in?

A. I don't even know him. • • •

Q. (By Mr. Lamb, continuing) I want to ask you whether you have departmental clocks around in that department?

A. We have not.

Q. You have not?

A. Have not. I am sorry, but I made the mistake. I was referring to the 3:30 on this time right now. This here I got mixed up with the other time, not because I just seen the cards, but I did before this. Right now it is 3:30. Before, these cards are right, that is the time we had the 7 to 12 and 1 o'clock, and then to 4.

The Master: 4 or 4:30?

A. That was my mistake. At that time it was 4. I made that mistake. I was thinking of now. • • •

The Master: From October, 1938, to—

A. (Interrupting) 1941.

The Master: April, 1941.

A. That is right.

The Master: What was the shift during this period of hours?

A. 7 to 12 and 1 to 4.

The Master: Throughout that entire period?

A. That is right.

The Master: That is one hour off at lunch?

A. Yes.

The Master: And the change now has been you only have a half hour off at lunch?

A. That is what I was speaking about. I made the mistake. I am sorry, but I didn't think about it.

Q. (By Mr. Lamb) I will show you the card back

again and ask you if on those exhibits 10, 11, 13 and 16 you can show us any time when any employee there checked out at 4 o'clock (handing exhibits to witness). Did you say 4 or 4:30?

The Master: He said 4.

Mr. Lamb: 4, O. K. Show us any time, or even two or three minutes after 4.

A. This particular one worked on the night shift.

Q. Mary Sawicki?

A. Sawicki, yes.

Q. Are you sure?

A. Yes, I am positive.

Q. Then answer the question as to whether on Exhibits 11, 10, and the other one there, Louella Rohrbeck, Exhibit 13, you can point to any case where the witness, or this employee, checked out at 4 or a minute or two or three afterwards?

A. No, I cannot.

Q. Were you always foreman on the day shift?

A. Yes.

Q. And who is the foreman on the night shift in your department?

A. Haven't any foreman in there at night; we have a sub-foreman on the machine operators, who takes charge.

* * *

Q. I take it that when for any reason there isn't enough work, that the employees in your department are sent home at times other than what you have designated as the four o'clock shift?

A. If the shift came in and there wasn't anything to do, they would go home, yes.

Q. So that employees may leave, the time clock cards may show they leave at various times during the day, is that right?

A. That is right. * * *

Q. (By Mr. Lamb) For instance, I noticed on the time clock card of Mary Sawicki for the period ending November 14, 1939, the first morning she punches in at 11:47,

the next day she punches in at 3:16 and the next day at 2:18, is that correct?

A. It must be correct, if it is on there. • • •

(A time clock card of Mary Sawicki was marked Exhibit 16-A, by the reporter.)

The Master: For the record, the card which the witness has just testified about, being the card of Mary Sawicki for the pay ending November 14, 1939, has been marked Exhibit 16-A.

Q. (By Mr. Lamb) On those same days she checked out at 9:48, 10:46 and 10:51, is that correct?

The Master: Let the witness see them.

(Exhibits were then presented to the witness.)

A. That is correct.

Q. Then the next two days she checked in, that is Monday and Tuesday, she checked in each day at 6:31, is that correct?

A. That is right.

Q. And out at 4:04 and 4:11, the same days?

A. That is right.

Q. Did you advise her the day before what time she should check in?

A. I do advise them, yes. • • •

(Time clock cards of Clarence Burgess were marked Exhibit 82, 82-A to 82-Z and 82-AA to 82-LL, respectively, by the reporter.) • • •

(Time clock cards of Mary Sawicki were thereupon marked, respectively, Exhibits 16-B to 16-Z and 16-AA to 16-LL by the reporter.) • • •

Q. (By Mr. Lamb) I note on the cards of Clarence Burgess, being Exhibits 82, 82-A, 82-B, 82-C, 82-D, 82-E and 82-F, that each morning of that period he checked in his time clock at 6:31. Will you verify that, please?

A. (After examining exhibit) I think that is correct.

The Master: It is not important, I guess, but there is one 6:32 in here, on Exhibit 82-E.

Q. (By Mr. Lamb) In other words, for the period between November 14, 1939, and February 6, 1940, each and

every working day except one day during the week of January 23, 1940, when he reported at 6:32, he checked in at 6:31, is that correct.

A. That is correct.

Q. Every working day between November 14, 1939, and February, 1940?

A. That is right.

Q. Now, I note on the time clock card of Nelson Luckman for the week ending February 6, 1940, that he also punched in at 6:31 every morning of that week, did he not?

A. That is correct.

Q. And each morning of the week ending February 20, 1940, he punched in at exactly 6:31, too, did he not, Mr. Nelson Luckman?

A. This one figure is blurred here. I don't know whether that is 31 or not. I couldn't say on that one.

Q. At least on the first Wednesday, Thursday, Friday, and then the Monday and Tuesday, Wednesday, Thursday, then that Friday seems to be blurred?

A. That is right.

Q. But on Monday and Tuesday again that is 6:31 each time?

A. That is correct. • • •

(Time cards of Nelson Luckman were thereupon marked Exhibits 83 to 83-JJ, inclusive.)

The Master: For the record, the cards of Nelson Luckman have been marked, the card for November 26, 1940, was previously marked as Exhibit 21, and the card for February 25, 1941, was previously marked Exhibit 11. The remainder of Nelson Luckman's cards from November 14, 1939, to April 8, 1941, inclusive, have been marked Exhibits 83 to 83-JJ, inclusive.

Q. (By Mr. Lamb) You were the foreman of the department in which Mary Sawicki worked, were you not?

A. That is right.

Q. And also of Nelson Luckman?

A. That is correct.

Q. On Exhibit 16-R, being the card of Mary Sawicki for the period ending June 25, 1940, I notice that the first three days she reports in at 11:46, 11:46, and 11:47. Then on Monday she reports in at 6:16. On Tuesday, 9:03.

The Master: You might have him looking on with you at the same time.

Mr. Lamb: Wednesday, 6:31; on Thursday, 6:16; on Friday, 6:16; on the following Monday, 11:46, and 11:46 on Tuesday; is that correct?

A. That is correct.

Q. Did you instruct her to report at those times? . . .

A. Not at those times on the card.

Q. (By Mr. Lamb) I notice that each of those days, irrespective of the starting time, she starts one minute after the quarter hour or two minutes after the quarter hour, and in each of the times irrespective of the working time, she has had her time computed from the following quarter hour; is that not correct (handing cards to witness)?

A. Where there is 6:16, her time was computed from 6:30.

Q. That is right, and where it is 6:31, it would be computed from 6:45, is that correct?

A. That is right.

Q. And then the total time computed for her under the company's method of computation that we understand to the succeeding quarter hour and so forth, her total computation, the company's total computation of the time worked by Mary Sawicki in that two-week period ending June 25, 1940, amounts to exactly 84 hours, is that correct?

A. I think that is correct. I haven't added it up, but I think it is correct.

The Master: Well, it is correct that that is the company's computation, isn't that correct? You can tell that by looking at it.

A. That is correct.

Mr. Nunneley: He hasn't checked it.

The Master: Can you see the 84?

A. Yes.

Q. (By Mr. Lamb) And on the week or two-week period ending July 9, 1940, being Exhibit 16-S, Mary Sawicki, under the company's computation and method of computing her working time, worked exactly 84 hours, isn't that correct?

A. That is correct.

Q. Have you ever punched the time clock card of Mary Sawicki?

A. No, sir, I did not. • • •

The Master: Have you ever punched out a card for any employee.

A. I have not.

Q. You know that certainly had been protested by a committee of workers calling on the management, don't you? • • •

A. I do not.

Q. (By Mr. Lamb) Is this the first time you have heard that claim, that you punched out or took out time cards and punched them through the time clock for the girls?

A. I never heard of it. The question has been asked me just once before.

Q. When was that?

A. In the last week or two. Mr. Cooper asked me that, if I punched somebody's card out.

Q. Is it your practice ever to stand near the time clock and watch persons in your department check in?

A. I would say maybe about four or five times a year.

Q. And did you advise them to step on it to get to work?

A. I never advised them to step on it at all.

Q. Did you see Mr. Doll at the time clock?

A. No, sir. • • •

Q. (By Mr. Lamb) And I include also Mr. Doll, Junior; have you seen him?

A. Mr. Doll, Junior, had been there once or twice maybe, and would be there for the reason maybe to ask me a question.

Q. Have you seen Mr. Doll, Senior, Mr. Doll, Junior, at the time clock watching employees check through?

A. No, I never have.

The Master: Which Mr. Doll, Junior, did you refer to in your answer?

A. Either.

Q. (By Mr. Lamb) I notice on the card of Nelson Luckman, being Exhibit 83-A, for the work period two weeks work period ending November 29, 1939, that he checked out at 3:59, is that correct, on the time card?

A. 3:59 is correct.

Q. Under the company's method of computation, do you know when he would have been paid for?

A. Yes, he would have been paid up until 3:45.

Q. Now, did you have any knowledge of Mr. Luckman on that Wednesday, being the first Wednesday indicated on the time card ending November 29, 1939, what Mr. Luckman did between 3:45 and 3:59 that day?

A. I can't recall that.

Q. On the following day that he worked, he checked out at 4:01, is that correct?

A. That is correct.

The Master: Have you seen it?

A. Yes, I have seen it.

The Master: All right.

Q. (By Mr. Lamb) And you have no knowledge of any difference in the activities of Mr. Luckman between the time he laid down his tools on the first day indicated ond day when he is marked out at 4:01, have you?

A. I haven't any knowledge; the only thing, it might have been he was supposed to have gotten out of there, his work was completed at 3:45 and he should have been out before that.

Q. Yes, but have you any knowledge of the difference in any work that that man did those two days when he checked out within two minutes of each other?

A. I can't recall, but he must have been dipping, or something, in there; I don't remember what his activity was those particular days.

on this card, when he is marked out at 3:59 and the sec-

Q. You can't remember any particular working time or hours or minutes worked by employees outside of by making reference to the time clock cards, can you?

A. No.

Q. So you didn't mean to indicate to the Court when you said that Mr. Anderson greased his arms or put a finger cot on that you had any recollection of his having done that on any particular day, have you?

A. He has done it every day.

Q. Outside the fact that you have observed him putting on his finger cots, you can't point to a particular day on which he did it, can you?

A. No, I can't point to a particular day, but they put them on every day.

Q. Or the day you said he dropped his tobacco, you can't tell us about that?

A. No, I can't. • • •

Q. (By Mr. Lamb) Now, this operator who you say operates these mechanical dipping machines—

A. Yes, sir.

Q. He arrives some time before 7, does he not?

A. Yes, sir.

Q. How much before 7?

A. I would say about three-quarters of an hour or an hour.

Q. I see. Is he an hourly employee or piece workers?

A. He is a salary-paid man.

Q. He is paid on a salary. Now, just what is his function, to get things moving and rolling at—in a proper working order?

A. He has to go in there the same as if he is working by hand. He has to take the water off the glaze, he has to inspect the machine, whether the guns are in working condition so that they can spray. He has to see that it is clean in order to operate, he has to get everything in shape, see that the air compressors are all running and everything is in contact, ready to go at 7 o'clock.

Q. Is there any requirement of him getting the machine warmed up?

A. No.

Q. Or the dies heated?

A. No, no requirements of that. The requirements are just to start them up to see that the fuses are not burned out.

Q. Now, you said you saw a girl stall around at the time clock once, waiting for four o'clock to arrive. Could you give us the name and date that that occurred?

Mr. Cooper: I don't recall whether that was the testimony either, your Honor.

The Master: What was your testimony on that point?

A. I didn't say anything about a girl. I said I have often seen them stall around at the clock. I didn't specify any girl, I don't think.

Q. (By Mr. Lamb). Can you specify the girl, and give us the date?

A. I can't specify the dates, like this one fellow in particular, I can specify him. I can't remember the other girls' names. It happened quite often.

Q. You are not able to tell us who they were or the dates when it may have been?

A. Well, Clarence Burgess was one of them.

Q. Do you know when Clarence Burgess was at the time clock at four o'clock?

A. No, I don't . . .

Q. (By Mr. Lamb) So that if he got out there at one minute of four, was his instructions to wait until the whistle blew before punching that time clock?

A. He wouldn't very often get out there before that time.

Q. Well, the fact is that the usual practice would be to hear the whistle blow and then stop and go to the time clock?

A. The time varies with different individuals in any department. This particular Burgess, he might have quit work at 3:30 or he might have quit work at 3:45. If his time was up at 3:30, he might have stalled around until after the quarter after, or if his time was up after 3:45, he might have stalled around until one minute after 4.

Q. So that the whistle you refer to doesn't have anything to do with the starting or stopping time?

A. Not with all the people. The time varies each day.

The Master: You mean, when you speak of these employees stalling around before the time clock, that they were waiting until the 15-minute period would pass, so that they could punch their time clocks out and get credit for another 15 minutes?

A. That is right.

Q. (By Mr. Lamb) You say you have seen Clarence Burgess out there waiting for four o'clock to arrive, is that correct?

A. That is correct.

Q. Can you give us the date of that?

A. No, I couldn't give you the date.

Q. Can you give us the name or date when you saw any other employee participate in a thing of that sort?

A. I never thought that I would answer for the days, and for that reason I never kept the dates. I just happened to go out for some reason to tell somebody something and happened to see him. I don't know the dates, but I did see the employees. I don't know the dates.

Q. Won't you say that at least the girls in the brushing department work until the whistle blows and then punch the time clock—leave and punch the time clock?

A. As a rule, if there is enough to keep them busy up until that time; or, if there is enough work and production is slow, and I will hold them over 15 minutes, I will hold them over 15 minutes.

Q. If you hold them over 13 minutes, what happens then?

A. I don't hold them over 13 minutes. If I would hold them over 13 minutes, they would still get the 15 minutes.

Q. Does it take the same girl the same length of time usually to walk from her department to the time clock?

A. That all depends who they meet on the way, or who they are waiting for, or whether they went to the dressing-room first in the department, or whether they

went outside to the dressing room. That all depends where they went.

The Master: In other words, your testimony is that it doesn't take them the same length of time, that that varies from day to day.

A. If they want to run, they run. I won't say "run," but walk fast, or if they want to talk to somebody, or wait for somebody else to get ready, they might quit one minute after, like 3:36, and wait to almost 4 o'clock for the rest of them to come.

Q. (By Mr. Lamb) I suppose what you say about leaving there is also true of their arriving, isn't that correct?

A. That is right.

Q. Now, these employees are piece work employees, are they not?

A. That is correct.

Q. And you say that these piece work employees aren't urged to get on the job and get the thing going because it is to their own advantage?

A. All I have ever told them is to be ready to work by 7 o'clock.

Q. And what about the fact they are on piece work? Do you urge them to get started and get the work going, it is to their own advantage to get their production out?

A. I urge them to get to work by 7 o'clock, be ready to work by 7:00.

Q. On these mornings that Mary Sawicki checked in every day at 6:31, what were your instructions about her getting to work then?

A. Well, she wouldn't have to work any sooner, and this particular Mary Sawicki has a brother or two in there that she occasionally goes down to give the car keys to, or something, before she starts in.

Q. You mean 6:31, checking in every day, she takes the—she gets on the job at 6:45, is that right, even though she is on piece work?

A. That is right. • • •

Q. (By Mr. Lamb) You say on your direct testimony that it takes the average employee 2 or 3 minutes to get from the job to the time clock?

A. From the time clock to the job, yes.

Q. From the time clock to the job?

A. Yes.

Q. And the job to the time clock?

A. That is correct.

The Master: I think he said two or three and added four; two or three or four.

Mr. Lamb: I think he said two or three, and I am under the impression I asked a question that added, could it have taken four.

The Master: I believe it was the other way around, but I will ask the witness what is your testimony on that?

A. I think I said two or three minutes.

The Master: All right. I have a definite recollection, but it is not very material.

Q. (By Mr. Lamb) You say that this method of computing the time which the Mt. Clemens Pottery Company utilizes of paying to the succeeding quarter-hour when the employee checks in, that that method of computation has been in effect ever since you put in the time clocks some seven or eight years ago, is that correct?

A. That is correct.

Q. Which would have been back in, approximately, 1935?

The Master: 1933 was when Mr. Doll said, in the days of the NRA.

Q. What is your recollection as to that?

A. Yes.

Q. 1933?

A. Yes.

The Master: Do you have any recollection as to the date the time clocks were first installed?

A. No, not the date when they were first installed.

The Master: About how long ago was it?

A. About seven or eight years.

Q. (By Mr. Lamb) Do you have anything to do with the physical computation of hours?

A. No.

Q. Do you have the decal girls in your department?

A. No, I do not.

Mr. Lamb: I think that is all.

The Master: Re-direct?

Re-Direct Examination

By Mr. Cooper:

Q. Mr. Harris, I show you Exhibit 82-HH, being the time clock card of Clarence Burgess for the period ending February 11, 1941, and ask you whether or not on each working day in that period Mr. Burgess punched in at 6:51, with the exception of one day when he punched in at 6:50?

A. That is correct.

Q. And I ask you whether or not on Exhibit 82-II, being the time clock card of Clarence Burgess for the two weeks ending March 11, 1941, he punched either at 6:48, 6:49 or 6:50 on each working day?

A. That is correct.

Q. And I show you Exhibit 82-JJ, the time clock card of Clarence Burgess for the two weeks ending March 25, 1941, and ask you whether he punched in earlier than 6:48 on any day in that period?

A. He did not.

Q. And I show you Exhibit 82-KK, the time clock card of Clarence Burgess for the 2 weeks ending April 8, 1941, and ask you whether he punched in earlier than 6:47 on any day during that two-week period?

A. No, sir, he didn't.

Q. And are the punch-ins in that time card either 6:48 or 6:49?

A. That is correct.

Q. And I show you Exhibit 82-LL, being the time clock

card of Clarence Burgess for the pay period ending April 22, 1941, and ask you whether or not he punched in either at 6:48, 6:49 or 6:50 during each working day shown on that exhibit?

A. That is correct.

Q. And I show you Exhibit 83-Y, being the time clock card of Nelson Luckman for the period pay ending October 29, 1940, and ask you whether he punched in any earlier than 6:50 on any day during that pay period?

A. He did not. • • •

Q. (By Mr. Cooper) I show you Exhibit 16-CC, the time clock card of Mary Sawicki for the period ending December 10, 1940, and ask you whether she punched in any earlier than 6:51 on any day during that pay period?

A. There are two different weeks on this particular card.

Q. And Mary Sawicki worked on the same shift during each of the two weeks?

A. No, she didn't, she worked on different shifts.

Q. What were the starting times of the respective shifts?

A. 12:00 o'clock and 7:00.

Q. And during the week when she was on the 7 o'clock shift, did she punch in any earlier than 6:51 on any day?

A. No, she didn't.

Q. What were the other times when she punched in during the week to which you have just referred?

A. 12 o'clock.

Q. I wonder if you understood my question, Mr. Harms. Referring again to the week when she was on the 7 o'clock shift, you said that the earliest she punched in was 6:51 in the morning. During that week what were the other times she punched in?

A. 11:47. • • •

CHARLES E. DOLL, JR., was thereupon called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Nunneley:

Q. Your name is Charles E. Doll?
A. Jr., that is right.
Q. Jr. How old are you, Mr. Doll?
A. I will have to think. 37.
Q. And you are employed at the Mt. Clemens Pottery?
A. That is right.
Q. How long have you worked there?
A. 17 years.
Q. You have been working there full time during that period?
A. Full time for 17 years.
Q. Did you work there some before that?
A. Yes, I worked around there ever since I was old enough to get a permit.
Q. Did you go to college?
A. Yes.
Q. Where?
A. Ohio State University.
Q. What did you take there?
A. Ceramic Engineering.
Q. Ceramic Engineering; that means the pottery business, in plain business, is that right?
A. That is right.
Q. And what is your present position?
A. I am assistant to the general manager.
Q. Your father is the general manager?
A. That is right.

Q. In general, what have been your duties or what departments have you worked in, in the course of your experience?

A. Well, as a workman, my experience was in the clay department and the mold department, and in a supervisory capacity of one kind or another I have been in practically all of them.

Mr. Nunneley: I will state for the purpose of the record that the questions I ask will have reference to a period prior to the commencement of this suit to April 14 or 15th, 1941. • • •

Q. (By Mr. Nunneley) Now, Mr. Doll, do you recall of there being a law passed called the Wage and Hour Act?

A. Yes, sir.

Q. Was there any discussion of that around at the plant?

A. Yes, we acquainted everybody in a supervisory capacity with what it was and when it took effect, and those kind of details.

Q. Before the Wage and Hour was passed, was there a definite work week in the plant?

A. Yes. We had been on about a 45-hour week ever since the days of the NRA.

Q. And how many days in that 45?

A. We worked five approximately 9-hour days.

Q. That would apply to the departments other than the kilns?

A. That applied to the production departments. The departments that operated 24 hours were on 8-hour shifts then, and have always been on that basis.

Q. The 24-hour departments so-called have always been 8-hour shifts?

A. Always.

Q. Was there any particular reason why there would be a definite hour program established? • • •

A. (Interrupting) Well, at the time the Act was passed and the recommendations that were made at the time governing working conditions and maximum employment, we established that system in the plant at my in-

sistence because I wanted a definite hour program under which we could operate.

Q. And since the Wage and Hour Act has been passed, of course there has been a limit on working hours at the plant, is that correct? • • •

The Master: No legal limit on working hours. There is simply the legal limit on straight time.

Mr. Nunneley: That is right, legal limit on straight time.

A. That is correct. • • •.

Q. (By Mr. Nunneley) Has that had any effect on your production or production control? • • •

A. The passage of that Act has had a favorable effect, if you want to put it that way, on our business. I am personally in favor of it because it does assist in the control of production, which is a definite advantage.

Q. Now, prior to the passage of the Act you were working 45 hours, I believe?

A. Approximately so, yes.

Q. What, if anything, had to be done by way of readjustment to start you in on the 44-hour week when that law went into effect?

A. Of course, in the 24-hour departments there was no readjustment. In the production departments the reduction of approximately one hour per week was not a distinct hardship, but we expanded our employment force some at that time and continued to operate.

Q. And when you brought it down to 42, what was the result, what was done on that?

A. Of course, from the company's angle it didn't mean anything particularly except that we had to expand the working force in order to continue the production under a decrease of two hours in the production week. This, of course, doesn't apply to the 24-hour departments because they have always both before and since been on an 8-hour basis.

Q. And when you came to the 40-hour week what was the effect there? What had to be done?

A. We again had to employ additional help to main-

tain operations with a two-hour less work week on straight time.

The Master: And has the company always had the policy of trying to arrange the work week so as to avoid overtime payments?

A. That is the policy because of financial necessity. You can't produce pottery and operate in competition with all of the other factories in the industry and produce any part of your product on a time and a half basis.

Q. (By Mr. Nunneley) This pottery that is produced sells at medium or low prices, so-called?

A. Yes, it sells at what is commonly known as low prices.

Q. Do you know when time clocks were installed for general use in the plant by employees?

A. Why, it was the latter part of '33 or early '34, I think.

Q. Had there been a time clock there before that time?

A. Well, the few hourly workers that we had always had punched a time clock ever since I can remember.

Q. Now, since the time clocks were installed in general use, as you have stated, what has been the method of computation of hours?

A. The method has been to start your calculation on an even 15 minutes period following the time clock register, continuing the calculation until the last full 15 minute period before another time clock register.

Now, if there are two registers in the forenoon and two in the afternoon, the total sum of the complete 15-minute periods included is the total record that is kept for clock purposes.

Q. In other words, no periods of less than 15 minutes have been computed, is that one of the features of that?

A. I think that is—that is the way we do it.

Q. Now, has that been the practice ever since time clocks were in general use in the plant?

A. Yes, that was the way we started out operating and we have continued that method ever since, to my best recollection.

Q. Now, Mr. Doll, just in general, what are your duties, what were they during the period of this suit?

A. Well, I have a good many special assignments to look after and complete from time to time, but in addition to those I have charge of most of the purchasing and outside correspondence, all of the plant production and control work and the supervision over some of the supervisory staff, depending on the particular angle involved.

Q. And are you familiar with the matter of their starting times, stopping times, and so on?

A. Yes, in a general way.

Q. Did each department have a standard starting time?

A. Yes, we try to have a standard starting time for each department.

Q. Were they always the same between departments?

A. No, that depended upon our production requirements as related to our mechanical equipment, and it also depended upon the production requirements as related to our volume of orders. In some departments it was necessary to always operate two shifts; some departments occasionally operated two shifts, in other departments you never operated but one shift.

Q. And did the same department always have the same starting time?

A. We tried to standardize it as nearly as possible, but we were not always successful; times you had to vary your starting time, depending on production conditions.

Q. And did each department have a standard quitting time?

A. Well, there again was something that you try to control, but it is not always within your power to control the day's production to the last 15 to 30 minutes.

Q. What time in the morning would you say, what was the starting time in the morning for the most people, for the greater number of employees, let's put it that way?

A. Why, 7 o'clock is the general starting time for most of the people.

Q. More people start at 7 than at any other time, is that correct?

A. That is right.

Q. And something has been said about a whistle. There is a whistle on the plant?

A. That is right.

Q. During the period that is involved here, did it blow in the morning?

A. We, for the last 20 years, have blown two whistles in the morning, one at five minutes to 7 and the other at 7 o'clock.

Q. Outside of waking me up in the morning, what was the purpose of blowing those two whistles?

A. The five minutes to 7 whistle was always construed as a warning whistle, either to people on their way to work who had not reached the plant, and to people in the plant who were dilatory about getting ready to go to work when the starting time came, and that whistle has been used for that purpose for a good many years. The 7 o'clock whistle is the starting whistle.

Q. Is there another whistle that is blown? What other times, let us say, did the whistle blow during this period?

A. 12 o'clock, 1 o'clock, and 4 o'clock.

Q. Was there any warning whistle at those times?

A. No.

Q. Other than at 7?

A. No, the 7 o'clock was the only one.

Q. Were those hours the hours when most people would be either quitting or starting work, the hours of those whistles?

A. Yes, those were normally the hours we tried to follow, to begin the shop.

Q. Now, something has been said about the discussion of the wage-hour act. How were the people who constitute the supervisory staff made acquainted with this wage-hour act?

A. Well, at our assemblies of these foremen, a thing like that would come up for discussion in its major de-

tails, and probably not once but several times, so that everybody would be thoroughly familiar with what it covered, and give such people an opportunity to ask questions in their own language just how those things were designed to operate and to get thoroughly acquainted with the company policy in relation thereto.

Q. And were any directions given to the supervisory staff in connection with it?

A. Yes, they were acquainted with minimum provisions, minimum wage provisions. They were acquainted with the maximum hour provisions they were acquainted with the overtime provisions and they were acquainted with the company policy that was adopted at that time to maintain, except in cases of emergency, of operations on a straight time basis.

Q. Did inspectors of the wage-hour division examine your plant during the year 1939?

Mr. Lamb: Objection.

The Master: I will take the testimony on it; if you know.

A. Yes, they were there in the latter part of the year.

The Master: It can be understood that you have a continuing objection, Mr. Lamb, to any evidence relating to this inspection.

Q. (By Mr. Nunneley) Did you meet these inspectors?

A. Yes, I did.

Q. What, if anything, did you have to do or did you do in connection with the inspection?

A. Well, my principal connection with it was to conduct one of the inspectors on a tour of the factory. While he was making his inspection, at his request, he wanted to make a tour of the plant, and interview the employees, and I was the one who piloted him through the plant and introduced him to these people.

Q. And what people did you introduce him to?

A. Well, as we went through each department, he selected, indicating to me a workman or woman that he desired to talk to. I would take him up and introduce him

to the folks in question, tell them who he was, tell them not to be afraid to answer any questions he asked and walk away and leave them in private conversation with him.

Q. Do you recall about how many employees he interviewed in that time?

A. We spent considerable time on this trip, and I would think about 30 people.

Q. Did you designate or select any of those people for him?

A. No, he chose everyone himself. All I did was introduce him and state his purpose.

Q. During and after the course of the inspection, did he make any comment to you regarding it?

Mr. Lamb: Objection.

The Master: Has the name of this inspector been named?

Mr. Nunneley: I don't know. Do you recall the name?

A. It was a party named Reifin.

Mr. Lamb: Objection, unless some of the plaintiffs were present.

The Master: Well, this comes under the same issue and again I will take the evidence and let the question of whether or not the inspection or the results of the inspection is material to be argued out in the briefs.

The question now is did he make any comment?

A. On our way back up to the office, he told me that the folks he had talked to were an intelligent group, that they had answered his questions in a satisfactory manner, that they did not seem to have any complaints to make, and he thanked me for spending the time with him.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Nunneley) Mr. Doll, did he make any comment to or criticism to you of the method of figuring or computing time?

A. He didn't.

Mr. Lamb: Objection.

The Master: Same ruling.

A. He didn't mention that matter to me.

Q. Was the matter of cutting down hours without payment of overtime any handicap to the company? By that I mean in complying with the wage and hour law in reducing your time from 44 to 42 to 40, was that any particular handicap to the company?

Mr. Lamb: Objection. • • •

The Master: I will take the testimony. • • •

A. The one purpose of the law, to spread employment, was the one purpose that we followed. We did add people to our working force. It meant no financial gain to the company. The inconvenience at the time was limited to placing more people on the payroll with some attendant expense in training additional people.

The Master: Didn't you have to have more equipment and more machines to turn out the same production?

A. No. We have had during our expansion and modernization program, more mechanical equipment in most instances than we actually needed.

The Master: You always have to have some reserve in mechanical equipment, don't you?

A. That is right, emergency and old equipment as you modernize with new. That was not a problem.

Q. (By Mr. Nunneley): Did the fact you put on some more people mean any particular increase in the amount of the payroll?

A. No. Our volume of business remained about stationary, as I recall it, during that period. It may have grown slightly, but we merely used the extra people to continue to produce in two less hours.

Q. So that if you produced 100,000 dozen that cost the same whether you use 100 people or 110 people, so far as payroll is concerned, isn't that correct?

A. On a straight time basis, that is correct.

The Master: Well, of course, that would be so as far as the payroll costs are concerned.

Mr. Nunneley: That is right.

The Master: But, you certainly could get to the point where increasing the number of employees and having them work less time, it may not increase the size of the plant and the supervisory or force over the payroll, or over the employees, but it would become expensive, eventually?

A. Your total reduction over a period of two years was only 10 per cent, and in normal times any thrifty or healthy organization can handle a detail of that kind.

Q. (By Mr. Nunneley): It wasn't necessary for you to build on any pieces on the plant, or anything of that sort, to take care of it?

A. No; we had everything we needed.

Q. The reason there would be no great increase in the payroll would be because the people were paid on a piece-work basis, is that right?

A. That is fundamentally correct. • • •

Q. (By Mr. Nunneley): It wouldn't be necessary—or, was it necessary to increase your number of hourly employees to a great extent?

A. No, we didn't increase them to my knowledge at all.

Q. What kind of work or what shifts, let us call it, are your so-called hourly employees on, Mr. Doll, in general?

A. Well, the bulk of them are people engaged in maintenance work, carpenters, steamfitters and repair men of one kind and another, and then the men that operate the boiler plant are on an hourly basis; some of your janitor help and clean-up help; that pretty near covers it.

Q. Kiln men?

A. No, the kiln men are on a piece-work basis.

Q. They are on a piece-work basis?

A. Yes.

Q. Were the hours of work in the Mt. Clemens Pottery reduced each year as provided by the Wage-Hour Act?

Mr. Lamb: Objection; the time clock card would show that.

The Master: He may answer.

A. Yes, the straight time working time of the production departments was decreased two hours in the latter part of 1939 and two hours additional in the same period one year later.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Nunneley): Now, Mr. Doll, something was said about a spray glazing machine, or a dipping machine, which I believe are the same thing. For the purpose of the record, will you give us a description of that machine, how it works, what size it is, and so on; just so we will get some idea what that thing is?

A. A spray glazing machines were developed to take the place of so-called hand dipping in which a dipper grasped a plate, submerged it in a tub of liquid glaze, took it out, shook off the surplus, and placed it on a rack to dry. That was a slow process and a tedious process, and the machine was developed to replace that operation.

Now, you still had the problem of placing the glaze on the surface of the piece of ware. A liquid bath was not found practical, and the process of applying that glaze by compressed air, the same as you paint a house with an air gun, was developed. The carriers for the product naturally have to return to the starting point after each operation, and the one known method of doing that is on a circle. These machines are constructed of—consist of a stainless steel table twenty-odd feet in diameter, with a series of holders around the outside perimeter.

A piece of ware is placed on each holder and the table in its revolving operation carries the holder inside a booth which holds the spray guns. These guns apply the glaze from the top and bottom at the same time. Holders continue their circle and leave the booth, and before they have returned for re-filling the product becomes dry enough to be lifted off and empty the holder for re-fill.

Now, these machines are operated by air and the glaze coat, the quality and the thickness of it are entirely controlled by the break-up that the air gives to the glaze material. We use a number of gauges to control this particular flow. The glaze, of course, is in a liquid state. It is mixed with the air and shot through nozzles before it is deposited on the product.

Now, this glaze is glass in a liquid form, and after it stays in the air a few minutes it hardens, eventually gets as hard as stone, and the one problem we have with this machinery is keeping it clean. For that reason we use stainless steel and aluminum and non-rusting materials in the construction, and every night the machine has to be completely cleaned. Every tip, every hose, every control, every valve, every gauge has to be cleaned of this glaze. If you leave it in there it will get hard and the thing won't work the next day.

References have been made to these men that come in and prepare these machines for the following morning, and they devote their entire time to re-checking and re-cleaning if necessary any of these working parts that may not have had all the attention they needed the night before, and you are ready for production. If you find a spray gun tip clogged up, or a hose doesn't work, or a gauge doesn't function, it is pretty late to take everything apart and clean it up and get back into production, so we have that preparation done carefully ahead of time.

Does that answer your question?

Q. In general. These holders for the ware, do they revolve as well as the large circle and the small one revolves too?

A. The table carries the holder in a stationary position until it goes into the booth, where it strikes a friction pulley and goes into a spin. The reason for that is to deposit the glaze coat uniformly from the guns and to throw off any surplus with centrifugal action. As soon as it comes out of the booth, it assumes a stationary position.

Q. About how many holders are on one of these machines?

A. Oh, there are approximately 100. Between 75 and 100 of them I think for saucers and items of that size. For plates there are some less. You can't get them as close together.

Q. Is there machinery attached to it for providing the compressed air?

A. We have a series of compressors, all the piping, oil drains, air cleaners and valves, other things that go with a complete installation.

Q. What turns it?

A. The machine?

Q. Yes.

A. It is driven by a motor with a V belt drive on the center shaft to the big table.

Q. Electric motor?

A. Electric motor. • • •

Q. (By Mr. Nunneley): Mr. Doll, in the operation of this machine, no hand dippers, I take it, are used, is that right, this spray glazing machine?

A. Not to perform the work. The men who operate these machines were hand dippers.

Q. They were formerly?

A. Formerly hand dippers.

Q. Girls or women place the ware on the holders in the machine?

A. On the holders, and remove it.

Q. And is it then brushed?

A. It had previously been brushed to clean it, before the glaze is put on.

Q. And sponged after it comes off?

A. No, there is no sponging operation on a flat piece. On a cup there is. The cups are done on the same principle, on a different machine, and they have to be done after they are glazed.

Q. Mr. Doll, Exhibit 73 has been identified as a map or plan of what is known as the gloss belt. Will you examine it and see if that is correct? • • •

Q. And how did that operate?

A. That is operated by electric power, if that is what you mean.

Q. Just tell us what the process is, how the ware gets on it and how it gets off, and where it goes.

A. Well, the ware is transported from these dippers and dipping machines to the belt. The belt was designed to provide a convenient system for loading this ware into the containers that took it through the kiln. The containers, known as saggers, move empty along the south side of the belt and are deflected into the individual sagger filling stations. The ware, on flat boards, is placed in stacks in these same stations, and operators place it by lifting it from the boards in individual pieces and placing it in these empty saggers.

When a sagger is filled, it departs on another conveyor belt and tracks around to where men load these saggers by stacking them on four-wheel cars. These cars are made of iron, fire clay slabs on the surface, and these saggers are stacked up a convenient height as the car moves along the track, and then the car moves into the kiln where the ware is fired to the desired temperature.

After the ware leaves this kiln it moves down a track to an unloading station on the same conveyor system where these full saggers are set off on to other belts and in their trip around are eventually emptied, cleaned, and ready for refilling.

Q. What was the normal starting time or work time in these departments?

A. The glost belt and a department not shown on here, which took the product away from the belt, generally were one of those 7 o'clock departments.

Q. In general, what was the noon hour?

A. 12 to 1 in those places.

Q. In connection with this glost belt system approximately how many people worked on it?

A. Well, the belt itself had close up to 100 people, and the chipping department that took the product away and which must be reckoned in any discussion of the glost belt,

because unless they can take it away they can't unload it off the belt, there must have been, well, there were 75 or 80 people in there, too.

Q. And what kind of help was it; male or female help?

A. Well, the chipping department was, oh, 80 per cent girls. The glost belt was probably 50 per cent, maybe 60 per cent girls.

Q. Did the fact there were a large number of girls employed on the system have any effect on the operation?

A. Well, any of you that have ever had dealings with large groups of help realize how hard it is to settle them down to a starting operation. They love to talk, and they are pretty hard to get down to business the first thing on that account. They are quite sociable, particularly the first thing in the morning, and they are just kind of hard to get under way.

Q. What about the practice or policy of the company relative to inviting or requesting employees to submit any complaints which they might have—

Mr. Lamb: Objection.

Q. (Continuing) —to the management?

Mr. Lamb: Objection.

The Master: I will take the evidence. This is another question of the same character as the inspection issue and it is one of the issues raised in the pleadings, and I will take the evidence.

A. Well, employees have been acquainted on more than one occasion by Mr. Doll, Sr., and their supervisors to the effect that if any of them had any complaints of any kind—

Mr. Lamb: May I interpose a question as to how they were advised?

The Master: Yes, I think you should state how they were advised.

Mr. Nunneley: Go ahead.

A. That we invited their complaints, and that we stood ready at all times to go into any matters in which they felt they had not been dealt with fairly. * * *

The supervisors acquainted them in groups and individually with the same thing. These matters were not confined to the rectification of any payroll errors, but were meant to include anything that an employee felt was something of a particular problem to him. The employees did utilize this system, not only on bringing what would be classed as complaints, but suggestions, criticisms, payroll errors, and other things to our attention over a long period, and on the part of a great many people.

The Master: How were the employees advised of the fact that you were receptive to complaints or suggestions?

A. Well, even new employees are advised of that at the time when they are employed. That is part of the company routine the same as you tell them about the first aid department and other pertinent facts.

The Master: Who tells them that?

A. The employment department, and during the period in question the superintendent who did the employing was the one through which one of these steps of bringing any of their problems was taken.

The Master: Well, have you observed—you say the superintendent in charge of employment?

A. Well, he is superintendent of the whole plant, and during this period had charge of the employment. He was both on the giving and the receiving end of this information that we are speaking of.

The Master: Who was that?

A. Mr. Roleau.

The Master: Have you ever been present when he has advised employees of that policy of the company?

A. Yes. In fact, when I substituted for him when he has been away or on vacation, I have given the same information.

The Master: You stated that your father also informed the mployees; how and when did your father give that information?

A. I can't give you the precise dates, but as far back

as 1925 it was his custom on some occasions, depending upon the circumstances, to call them together for some kind of a talk, and in the particular course of the discussion he always referred to that.

The Master: You are speaking now of the general meetings of all of the employees, or little groups?

A. No, we have had assemblies of employees in years gone by.

The Master: Well, the question was, you stated that your father advised the employees that you were receptive to complaints and suggestions, and I asked you how that information was given to them; I don't understand whether you mean it was given to them at meetings that were called of all the employees, or whether—

A. We had assemblies of employees at which he attended and addressed them on various subjects, including the one we are talking about.

The Master: Were you present at those meetings?

A. Oh, yes.

The Master: Do you know everything that you stated here from first hand knowledge?

A. That is correct.

The Master: Or are you testifying from hearsay?

A. No.

Q. (By Mr. Nunneley) During the period in question, do you have any knowledge of any complaint being made about the method of computing hours?

Mr. Lamb: Objection.

The Master: Same ruling, you may answer.

A. No objections that I can recall ever came to my attention and I was in a position to know in most cases about such matters.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Nunneley) For illustration, if a group or department had an established starting time of 7 o'clock, at what time would they be permitted to pass the time clock?

A. We followed the practice of opening the clock 14 minutes before the established starting time.

Q. Who would be the person or the employee in control of that at the clock?

A. Well, that matter was in the hands of a watchman who was stationed at the clock.

Q. And would he be the person who would open the clock, release it at the proper time?

A. He would permit people in a certain department, or departments, to punch in according to his instructions on any given starting period.

Q. If the regular times were changed, who attended to notifying the watchman?

A. Well, under normal circumstances, I did; if I weren't there, and in an emergency someone substituted for me.

Q. For how long a period has that system been followed at the clock?

A. Ever since we have been using the time clocks for our employees.

Q. The same system has been used right up until the time this suit was started?

A. That is right.

Q. Is it used yet since the suit was started?

A. Yes, we use the same system.

Q. Confining it to the period of the suit, can you tell us when under the system of computing time, an employee would be considered as being late for work?

A. We generally consider that if he is not in the department, ready to go to work at the end of whatever you might call a 14-minute period or the following quarter hour, if he were not in the department ready for work at that time, he was considered late.

Q. And how were they all paid, or practically all of them?

A. Well, all but not over two dozen people out there, on a piecework basis.

Q. Do you know of any work that any of the employees did that they were not paid for?

Mr. Lamb: Objection.

The Master: Overruled.

A. No, I don't think I have ever heard of a single instance of that kind.

Q. (By Mr. Nunneley) Up until the time this suit was started, did you ever have any complaint by any employee that they had not been paid for the work which they did?

A. Yes, we had adjusted some matters in the office from time to time. That is not unusual with a thousand people for payroll or clerical errors on a piecework basis. Wherever an employee showed that was the case, we always made the correction. * * *

Cross Examination

By Mr. Lamb:

Q. Mr. Doll, will you advise us of the net profits of the Mt. Clemens Pottery Company in the years 1938, 1939, and 1940?

Mr. Nunneley: Objection. * * *

Q. (By Mr. Lamb) Mr. Doll, in that connection have you advised us what position you hold with the Mt. Clemens Pottery Company?

A. Yes. I am assistant to the general-manager, and I have—

Q. (Interposing) Do you have any title such as secretary, treasurer, or vice-president?

A. No, we are short of titles out there.

The Master: Did you have that position throughout this period of 1938 to 1941?

A. Yes.

Q. (By Mr. Lamb) Let me see, your father is president of the company, or general manager?

A. He is general manager.

Q. Who is the president of the company?

A. I believe Mr. Williams is president. * * *

Q. And your father, what title does he have? What position in the company does he have?

A. He is general manager. • • •

Q. Are there any other members of your family who are officers or connected with the Mt. Clemens Pottery Company?

A. I have a brother who is employed there.

Q. What is his name?

A. J. R.

Q. J. R. Doll?

A. That is right.

Q. What position does he hold in the company?

A. Well, I don't believe he carries a title.

Q. Isn't he Personnel Director?

A. I will take it back.

Mr. Nunneley: That is since the period covered by this suit.

A. Up to that time he carried no title.

Q. Is he personnel manager?

A. He is now.

Q. Who starts the glost belt running?

A. Who starts it to run?

Q. Yes.

A. Generally the foreman.

Q. Have you ever started it?

A. Yes.

Q. Have you ever been present when the employees checked through the time clocks, watched the process?

A. Oh, not regularly; I have seen them do it, yes.

Q. Will you give us your opinion as to how many employees can go through in a minute, one time clock?

A. Well, I think we get 20-odd through in a minute.

Q. How many?

A. 20-odd, maybe 24 or 25 people.

Q. You stand alongside of them with your stopwatch, do you?

A. I have timed them at different times, yes.

Q. Told them to "get moving"?

A. No, I have nothing to say to them.

Q. Are you familiar with any deductions from the pay for beginners?

A. Deductions from pay for the beginners?

Q. Yes, whether or not you have any policy of deducting anything from the pay of first—

A. (Interposing) For beginners you generally have to add to the pay, not deduct; I don't know why anybody would deduct anything from a beginner.

Q. Well, we may also wonder, but if you have any knowledge of any deductions of 10 per cent from pay checks of the girls during the first 10 weeks of their employment?

A. No, sir.

Q. You don't have any knowledge of that?

A. No, sir.

Q. You say that has not been done?

A. To my knowledge it has not been done.

Q. Would you have knowledge of that?

A. Would I?

Q. Yes.

A. I don't have much to do with the office records, practically none; I don't see the work sheets or the computations, or those things; it is all done and I may never see it from month to month, but I have never heard it.

Q. You mean you have never heard there was 10 per cent taken off the wages of girls?

A. No; you have to add because the law guarantees these people a definite minimum and they never earn it.

Q. Do you know whether that definite minimum was paid by the Mt. Clemens Pottery Company to the girls who were starting?

A. Do you say do I know it was?

Q. Yes.

A. As a matter of general principle I would say so; I can't give you any specific instances.

Q. Is it your testimony that you didn't know that 10 per cent was taken off?

A. I say I am not familiar with it; I can't tell you yes or no; I never heard of such a thing.

Q. Well, did you mean to imply that the Master that you had never heard of any errors in payroll computations, or complaints by employees about the computation of their earnings?

A. No, sir, my testimony was to the effect that we had never had anybody do any work they weren't paid for; that sometimes there had been errors that were later rectified, but that was covered by my previous statement. We have had errors.

Q. I see; you don't mean to imply you haven't heard of errors?

A. I didn't say so then and I don't say so now.

Q. What is the physical operation of your turning on the glost belt; will you describe that?

A. That system is controlled by an interlocking switch system connected to a master and emergency switches, and in a normal operation if you press one of the starting switches the current is thrown on.

Q. Whereabouts do you start that? In the general offices?

A. No, the foreman generally starts it at some one of his starting buttons, depending upon where he happens to be. He generally selects for his purpose of convenience one of them.

Q. And when you touch this master switch, that starts the whole machinery functioning by which the glost belt then goes in operation?

A. If it is in normal operating condition, yes.

Q. How many employees are engaged on that glost belt system?

A. Well, that department has close to 100, and then of course as I explained before, the department that takes the product away, there are 70 or 80 people more over there that must be practically considered as part of the same unit, although they are in a different room.

Q. So that there might be in the department a larger number than who would be on the glost belt itself, is that right?

A. Well, in the two departments.

Q. And what do you label the two departments?

A. The chipping department is a definite adjunct to the glost belt. The glost belt can't run without the chipping department running.

Q. How many employees work in the chipping and the glost belt department?

A. Well, you would have close to 175 people or 165 people.

Q. Do they use the same time clock in both departments?

A. Yes, they did at that time.

Q. Which one did they use?

A. They used the one you call "B" on your layout here.

Q. Exhibit 30-A?

A. Yes.

Q. Could you tell us whether or not the glost belt starting apparatus has any timing record? Whether you have any recorded record of the time of the glost belt master switch starting each day?

A. You mean one of these automatic check-writing outfits?

Q. A record, yes.

A. No, sir.

Q. As I understand it, you have charge of purchasing?

A. That is correct.

Q. Will you produce the records of the purchases of materials sold to the employees by the Mt. Clemens Pottery Company in the years 1938, 1939, 1940 and the first half of 1941?

Mr. Nunneley: What employees?

Mr. Lamb: All employees represented by us in this action.

The Master: What kind of record do you have of the purchases?

A. I have no individual records of the purchases. They are part of the company's records.

The Master: Yes, but what records does the company have?

A. If you buy, like Mr. Lamb is referring to, perhaps, you buy a bale of sponges from some sponge companies, you have an invoice that we keep for some period. I don't know how far back. Those things get pretty cumbersome.

The Master: What kind of summary records do you keep? • • •

A. The only record we have of the sales are the records in these work sheets.

The Master: Wouldn't there be a record that would show the total purchases and sales of sponges in a year to all employees, without distinguishing each employee?

A. No, not sales. The records would show the purchases of, perhaps, sponges, but they don't all go to the sales of employees. That wouldn't by any means show you if you bought $100 worth of sponges that every sponge in that $100 worth was again resold.

The Master: Where else are they used besides selling to the employees?

A. Well, of course, in your general operations around the plant you might need something for cleaning purposes. Somebody might want one to wash one of the company delivery vehicles with.

The Master: That wouldn't be a very substantial amount.

Mr. Lamb: Certainly you have a record of the amount you receive or charged for the sponges.

A. Just a record of the amount we pay for them.

Q. (By Mr. Lamb) And also the amount you receive?

A. Well, that record is in the work sheet.

Q. You would have some summary?

A. No summary.

Q. Of what you received at the end of the year for the sponges you bought?

A. No summary. • • •

The Master: As I understand you say there is no summary record showing total sales of various items of equipment to the employees?

A. That is right. You see, the amount involved is so small—if Mr. Doll stated $1000 I personally think he has overestimated by 100 per cent. I don't think we possibly could buy $500 worth of pails and scrappers and these other items you mention in any one year.

Mr. Lamb: And gloves.

A. And gloves, either; no, sir. You can buy a lot of gloves for 500 bucks.

The Master: You must have a summary record of purchases?

A. None whatsoever. No summary record of purchases. I can get an individual invoice for gloves or individual invoice for pails. • • •

Re-Direct Examination

By Mr. Nunneley:

Q. Mr. Doll, I have one question; I don't know whether this was brought out; what was the regular starting time of the gloss belt?

A. I think I said it was one of the 7 o'clock departments, didn't I?

The Master: I think you so stated.

Q. (By Mr. Nunneley) Something has been said about time clock "B"; is that where there are now two clocks?

A. Yes, we have two clocks now.

Q. Do you recall when the second clock was put there?

A. It was put in two or three weeks before the strike in April of 1941.

Mr. Nunneley: That is all. • • •

June 22, 1942

JOSEPH D. FOX, was thereupon called as a witness on behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Fox?

A. In Lakeline, Ohio, suburb of Cleveland. • • •

Q. Are you connected with an organization known as Industrial Advisers Bureau, Inc?

A. Yes, I am.

Q. Could you describe to the Court the nature of the activities of the Industrial Advisers Bureau?

A. It is a service organization that supervises the activities and compliance of industrial firms with certain laws, particularly labor laws. The complete activities of the firm consist of supervising the workmen's compensation program, the social security program, insurance program, and the wage-hour programs of industrial companies. • • •

The Master: Are you the only firm of that kind in the country?

A. We have some competitors in the workmen's compensation and social security services. I haven't heard—there might be some actuarial companies that do a wage-hour service, but I haven't heard of them.

Q. (By Mr. Cooper) Approximately how long has the Industrial Advisers Bureau been engaged in this line of work?

A. In all except the wage and hour supervision, they have been in business 11 years. The wage and hour work commenced October 16, 1940.

Q. And how long have you been connected with Industrial Advisers Bureau?

A. Since October 16, 1940.

Q. What is the nature of your work with the Bureau?

A. I am in charge of the wage and hour part of the business.

Q. And in that connection how does the bureau operate?

A. I have a crew of inspectors who go out and make factual inspections, and in the case of certain types of clients I make the factual inspection myself. And, in case another inspector makes it, he delivers a factual report to me, and I draw up a report with recommendations, and I always deliver those reports and go over them with the management of the company personally in every single case, and then four times a year we make a formal reinspection of the company and in between times we consult with them on new problems that arise. It is a yearly service in each case. • • •

Q. (By Mr. Cooper) In making such inspection, Mr. Fox, do you examine the method employed by a company in computing hours of work of its employees?

A. Yes. That is one of the important matters.

Q. Prior to your association with Industrial Advisers Bureau, did you have any other experience with the administration of the wage and hour law?

A. Yes. The day before October 16, 1940, I was an inspector for the Federal wage-hour division.

Q. How long had you been an inspector for the Federal Wage-Hour Division?

A. About a year and a quarter.

Q. That would take you back to some time in the summer of 1939?

A. The summer of 1939.

Q. About how many plants does your organization inspect for compliance with the wage and hour law, Mr. Fox? • • •

A. Slightly over 200.

Q. (By Mr. Cooper) Are there any potteries among your clients?

A. Yes.

Q. Approximately how many?

A. Five or six.

Q. Now, in the course of your work have you become familiar, Mr. Fox, with the methods used in these plants, and particularly in these potteries, in connection with the computation of hours worked?

Mr. Lamb: Objection. It wouldn't make any difference.

The Master: Overruled.

A. Yes, I have. • • •

Q. (By Mr. Cooper) Have you found any similarity between the general methods employed by the potteries and by other industries in computing hours worked?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, I have. • • •

A. In fact, I found very few differences between potteries and any other type of industry.

Q. (By Mr. Cooper) Have you found any general pattern in industry generally as to the methods of computing the hours of work of an employee?

Mr. Lamb: Objection. • • •

The Master: Well, I think that is the only way such evidence could be given is by somebody who is familiar with the situation in plants, otherwise we would have to bring in maybe ten thousand individual workmen or employers, to testify as to what the practice is in their plants, and the court would have to fit it all together in a pattern. The substitute for that is to have a man who is familiar with the practices in various plants, from personal experience testify, so that I will also overrule that objection, but you may have a continuing objection on that ground, if there is no objection on behalf of the defendants to the plaintiff having a continued objection, so it will be unnecessary for you to repeat the objection.

• • •

Q. By Mr. Cooper: Have you observed, Mr. Fox, as to whether there is any general practice or pattern in

industry in this part of the country as to computing the number of hours that an employee has worked?

A. Yes, there is very definitely a pattern. • • •

Q. (By Mr. Cooper.) What is the general pattern or practice which is followed?

A. The general practice is where there are not three shifts without a pause, the general practice is to consider that the man has started to work at the regular working time, that is, every plant has a regular working time, regular starting time, and in the plants with three continuous shifts, or continuous shifts, they assume the same thing in effect in that unless the foreman indicates that one man has substituted for part of another man's shift, they also assume that the man has started at the regular starting time for his shift.

Q. Do you know of any plant that computes hours worked from the minute an employee rings the time clock?

A. I know of none.

Mr. Lamb: There is an objection to that.

The Master: Overruled.

Q. In plants that use time clocks, what is the function of the time clock card in computing the number of hours an employee has worked?

A. Principally an attendance record, and a record of lateness. You see, if a man has quit in the middle of the afternoon or left his work in the middle of the afternoon, they always depend on the foreman writing something in pencil or ink on the time card, so that the payroll departments use the time card to show whether the person was there during the normal work day, and in most plants where there is deliberate overtime work, the foreman has notified, or the payroll department has notified the foreman—it all depends whether the payroll department is a combination production control and payroll department. In that case, the payroll department notify the foreman as to how much overtime to allow them to work. And if the reverse is the case, if the foreman is the production control man, the foreman tells the payroll department how much overtime has been worked.

The Master: What was this you said about in some plants the foremen write down something on the card if the employee leaves early.

A. In this kind of a case, for instance, supposing a card shows a punch in the morning and perhaps a punch at noon, and no punches thereafter, the payroll department will not make any assumptions in that case. The foreman will be—if he hasn't already done it, will be asked to indicate the time the employee has left, whether he has worked a full day or not.

The Master: That is the case where the employee goes out and doesn't punch the time card out?

A. That is right. If the normal quitting time is 4:30 and he punches out at 2 o'clock, and the foreman hasn't made a notation, "Excused at 2 o'clock," the payroll departments will have to ask the foreman why the 2 o'clock punch.

The Master: From your experience, in plants employing a thousand men or more, do they have an attendant at the time clock to see that the men punch in and out, or do they just leave that to the men?

A. The ones engaged in war industries now have attendants, but I have noticed a lot of very large plants today have no attendants at the time clock.

The Master: They wouldn't let a man go in or out very often without punching in or out, without saying something to him, would they?

A. It all depends. It depends upon the location of the time clock. In some cases the foreman is supposed to attend to that, and in some cases a payroll clerk is sitting at the time clock during the normal punching time, but he is not there all day. Consequently if a fellow punched out, say, two hours before the regular quitting time, the payroll department would question the foreman about it, if he hadn't already made a notation on the card.

Q. (By Mr. Cooper) Suppose an employee rings in at the time clock 10 or 12 or 14 minutes before the regular starting time, under the practice as you have described it, when do his hours of work commence?

Mr. Lamb: Objection.

The Master: Overruled.

A. At the regular starting time?

The Master: Let me ask you this. In these plants you are familiar with, if a shift starts at 7 o'clock, for example, is the employee expected to pass the time clock at 7 or before, or is he expected to be at his position of work at 7 or before?

A. He is expected to be at his position, ready to work, at 7 o'clock.

The Master: Is that true of all the plants you are familiar with?

A. All the plants I am familiar with.

The Master: You don't know of any that simply require that he pass the time clock at 7 o'clock?

A. I can't think of a one.

The Master: In the plants that use time clocks that you are familiar with, what has been your observation as to the distance of the time clock from the position where the employee works?

A. That varies considerably. Anything from—in some plants they have a time clock in each department. In some plants they have two time clocks for a very large plant, large in area. And, I know one large plant where they only have one time clock for hundreds of thousands of feet of floor space. In some plants, particularly machine shops, the fellow punches in his time card, and then before he starts his first job, he punches the job card, which is used by the cost department. • • •

Q. (By Mr. Cooper) Suppose an employee rings out of the time clock some ten minutes or so after the regular quitting time. As of what time would the conclusion of his hours of work be computed?

Mr. Lamb: Objection, unless he refers to the plants he is making some claim about. • • •

The Master: He can describe the general practices he has observed, I think, on direct examination. On cross examination, if you desire to test his credibility by asking him for specific names, why, I will have to decide that at that time. I don't know what the law is on it. I, off-

hand, would think that—I am in doubt whether there is any privilege that exists there, but I will wait until the cross examination to decide that.

Would you give the question?

(Question read.)

A. It would be assumed he would quit at the regular quitting time.

Mr. Lamb: I ask that the answer be stricken as to what would be assumed.

A. I mean, they pay as though he had quit at the regular quitting time.

Mr. Lamb: Who is "they."

The Master: He means the employer.

Mr. Nunneley: We object to counsel trying to cross examine the witness as we go along.

Mr. Lamb: I am going to object to this kind of hearsay testimony.

The Master: Your objection is on the record; I will overrule it.

Mr. Lamb: I object to the basis of the question; who is the word "they."

A. I mean the payroll clerk.

Mr. Lamb: What payroll clerk?

Mr. Nunneley: We object to that.

The Master: You will have to go into that on cross examination; you cannot interrupt their examination unless you are stating objections.

Mr. Lamb: I am stating objections.

The Master: I will overrule it.

Q. (By Mr. Cooper) Let me ask you, Mr. Fox, whether or not the practice you have been describing is what you have observed as a common practice in some 200 or more plants where time clock cards are used?

Mr. Lamb: Objection.

A. That is what I have observed.

Q. Can you say whether or not there is a variation from that practice in the case of plants that do not use time clock cards?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: It is not only improper, but it is leading.

A. In plants that do not use time clock cards, which are very few in the case of production employees, the foremen will mark the elapsed hours, not the quitting time, but the elapsed hours in a time book, and there has to be very definite work done after the regular quitting time, before he will mark anything other than the normal number of elapsed hours.

Mr. Lamb: I ask that the answer be stricken. I don't know who he is talking about, the foreman might have a practice.

The Master: He is talking about general practices, and he is an expert witness, I think, on that subject, and I think the testimony is proper.

Q. (By Mr. Cooper) In making these inspections that you have described, Mr. Fox, do you have occasion to examine time clock cards themselves?

A. Yes.

Q. Roughly, how many such inspections have you made?

Mr. Lamb: Objection.

The Master: Overruled.

A. You see, I first want to explain this; even where I don't make the physical inspection, I have to go over certain evidence with the management of the company when I deliver the report, so I have to go into the matter of time keeping even if I don't make the factual inspection myself, but in my experience with Industrial Advisers Bureau, together with the Government experience, I would estimate it at, oh, 350 plants. . . .

Q. (By Mr. Cooper) Can you give the Court any rough idea as to how many time clock cards you may have examined?

Mr. Lamb: Objection.

The Master: Overruled.

A. Well, the best I could do there would be to say it would be thousands.

Q. Out of these thousands of time clock cards that you

have examined, how much before starting time, on the average, do most of the employees punch in?

Mr. Lamb: Objection.

A. That—

The Master: Just a minute. Overruled.

A. That varies according to the neighborhood, or according to the location of the plant, which has to do with the neighborhood that the employees come from. I could roughly classify them in two ways, those plants where the majority of employees live within easy street car distance, and those plants where the employees are spread out, from, say, a majority of them living beyond the normal transportation system, and it is quite different there.

In the plants where they live within easy street car distance, I found that the time clock cards are punched from 25 to 5 minutes before starting time. In the other plants, where the workers come from more varied distances, I have come across large numbers of time cards that were punched as much as an hour and a quarter, from an hour and a quarter to five minutes, in the case of the close-by worker.

There is a good reason for that, of course. From my own experience, as well as from what I have found in plants in questioning employees, you see I always question employees myself on the matter of time clock punchings; I found the reasons for punching in so early are varied in detail. In general, though, they can be summed up as follows: They come in early in order not to be late, in order to make sure they will not be late. For street car riders, I found that they deliberately planned to get there 15 minutes ahead of starting time, figuring that that is enough leeway for ordinary transit delays. Where they come from a large distance, depending on who has to get the breakfast, whether their wife gets it for them, or they get it themselves, they deliberately plan on more time so as to take care of breakdowns in their car, or traffic snarls, or things like that.

The thing that I have observed most has been that most employees have a very great horror of coming in late.

They don't like the atmosphere when they come in late, and, therefore, they make sure of coming on time.

In one plant, for instance, the Plain Dealer newsboy, one plant in Cleveland, the Plain Dealer newsboys sells over 500 copies of the Plain Dealer in the morning to people who expect to read them pretty thoroughly before they start after they get to the plant.

Mr. Lamb: What plant is that? I object to that.

The Master: Overruled.

Mr. Cooper: I don't think we should have these interruptions.

The Master: You will have to state it in the form of an objection, rather than the form of a request to the witness.

Mr. Lamb: I would state an objection, and ask that the entire answer be stricken. I think it is highly improper to allow any person to come in here and give generalities and not specific enough that we know what he is talking about.

The Master: An expert witness always testifies to generalities.

Mr. Lamb: And also that it is hearsay.

The Master: But now he has referred to a specific plant and a specific instance, I don't know but what you ought to state the name of the plant. I will wait until cross examination and you can ask the name of the plant, and I will pass on it at that time.

Q. (By Mr. Cooper) By the way, Mr. Fox, have you had any occasion to examine the time clock cards of employees of the Mt. Clemens Pottery Company, listed as plaintiffs or represented parties in this action?

A. Yes, I have.

Mr. Lamb: Objection.

The Master: Overruled.

Q. And how does the pattern of punch-ins on those cards compare with the general pattern as you have seen it on the several thousands of other cards that you studied?

Mr. Lamb: Objection. It is a conclusion.

The Master: I will allow it. I will hold this man is an expert, and that it is a proper subject of expert testimony.

A. I want to preface my answer by saying that I picked cards at random, and to me from the elapsed times that were allowed at the right-hand margin of the card, I would say that they are doing what practically all of the plants in my experience are doing.

Q. (By Mr. Cooper) Is there any customary practice as to making a deduction if an employee punches in at the time clock after his regular starting time?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, there is.

Q. What is the general practice?

A. The general practice, which incidentally has been incorporated in a lot of Union agreements that I have seen in these plants, is to deduct a quarter hour if the employee comes in anything—well, in some plants if he comes late. If he is up to a quarter of an hour late, they deduct a quarter of an hour. In some plants he has got to be late at least one minute, that is, a full minute. In some plants, one plant in Detroit, for instance, he has to be late three minutes before they make a deduction.

Mr. Lamb: What plants?

Mr. Nunneley: We object to that.

The Master: You can go into that on cross examination.

Mr. Lamb: I also want an objection on the basis he doesn't name the union agreement.

The Master: I will hold that is something for cross examination.

A. Then the custom generally goes like this, that if they are 16 minutes late, a half hour is deducted.

The Master: Let's take a plant again where the shift is supposed to start at 7 o'clock, and the time clock is, say, 500 feet away from the particular employee's place of work so that it takes, just say it an arbitrary figure, say it takes two minutes to walk from the time

clock to the place of work. Then under the practices which you have observed, is the employee docked 15 minutes if he doesn't report to his position of work by 7 o'clock and does punch the time clock at two minutes to 7, or is he docked 15 minutes if he just fails to punch a time clock before 7?

A. No, what generally happens is this. The payroll department, just from looking at the time cards, decides whether to dock him or not for being late. If the fellow punches at 7 o'clock and reaches his place of work 2 minutes late, if it has annoyed the foreman, the foreman will speak to him, unless he is the kind of foreman, that is afraid to speak. I mean, there is a delicate situation in some plants. In some places, it doesn't bother the foreman so much if the fellow arrives there two minutes late. And in those cases where the 2 minutes is important, the foreman keeps that in mind in recommending transfers or promotions, things like that.

The Master: Do you have any experience or familiarity with plants working in two or three shifts per day, where they use a continuous conveyor system in production?

A. Yes.

The Master: Well, how does that work out with regard to where they change shifts, with respect to one employee leaving and another employee replacing him?

A. In the plant I have in mind, the person on the previous shift stays there until relieved, and if a couple minufes pass, and the relief hasn't shown up, that person is sent home and his foreman makes other arrangements, transfers someone from another departments, or picks up an extra.

The Master: In that type of case—

A. Once in a great while they might ask the person if they want to work a while.

The Master: In that type of case the employee might have to be in a position to work at the time the shift starts, or the previous men would be working overtime?

A. That is right. In a certain seam forge plant the

men themselves have a rule that the man on the previous shift stays there until his relief comes, and that rule has sort of been approved by the management.

Q. (By Mr. Cooper) Are you familiar, Mr. Fox, with the so-called shop rules or shop practices commonly observed in this part of the country?

A. Yes.

Q. Is there any common practice—

Mr. Lamb: There is an objection to that. I suppose what he is referring to is the city of Detroit or its environs—this part of the country.

A. That is not what I considered.

The Master: What do you mean by "this part of the country"? Define it.

Mr. Cooper: Perhaps I should ask the witness to state what he means by it.

A. I have been answering that question—I thought you meant between Pittsburgh and Detroit, and around these latitudes.

Mr. Lamb: Did you refer to Detroit plants when you testified?

A. Yes. I am referring to either Detroit or Cleveland plants.

Q. (By Mr. Cooper) Are you confining yourself to those two particular cities?

A. Well, those two cities have most—not all, but most of the large plants that I am familiar with.

Q. Is there any common practice with reference to the time when an employee is supposed to be at his place of work?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, there is. The general practice is that he is supposed to be at his place of work at the regular starting time.

Q. (By Mr. Cooper) Do you know of any plant that considers the time worked by an employee includes all the time he is inside the plant?

A. No, I know of no plant that does that

Q. Are employees in the pottery industry generally, as you have examined plants in that industry, and particularly those employees who are production workers, are they paid predominantly on piece rates, or on hourly rates?

Mr. Lamb: Objection.

The Master: Overruled.

A. My impression is that there are a few more piece workers in the pottery industry than hourly paid workers.

Mr. Lamb: I ask that the answer be stricken. We are not interested in his impression.

The Master: That is a proper way to testify. It is overruled. It is all right, I think, with an expert witness, to testify that way.

Q. (By Mr. Cooper) Are those impressions based on your own observations?

A. Yes. The reason I put it that way is because I haven't made an actual census.

Q. Do you have any knowledge on the basis of these inspections you have made as to what is usually taken into consideration in fixing the piece rates?

A. Yes.

Q. Describe that, please.

Mr. Lamb: Objection. There can be a thousand different things taken into consideration in fixing piece rates.

The Master: Well, I will take his answer.

Mr. Lamb: It should be a specific case.

The Master: He isn't limited to a specific case. If he is an expert he can testify generally.

A. First I want to say that the practice in the pottery industry is different from the practice in industry in general only in this sense, that the things that they take into consideration have different names, but they have certain things in common.

In industry generally—and then I will describe what they do in the pottery industry—in industry generally whoever it is that is setting the piece rates wants the employee to earn a certain amount of money at the end of the week working at average speed with average skill.

The piece rate is then determined backwards by taking into consideration how many pieces the employee will be able to make after allowing for all of the various delays, and so forth, and allowing for any expenses that the employee may have in connection with his work. The idea is to arrange a rate arbitrarily based on a mythical average worker, so that the employee will earn a certain amount of money at the end of the week in net figures. That has been evidence particularly by the fact that in large numbers of plants, if the firm finds that they have been fooled as to who is an average worker, and finds that the average worker works faster than they thought he was, that they cut the piece rate.

Although the work is of the same value to them, they, nevertheless—the whole idea seems to be to have the employee earn a certain amount net at the end of the week.

In the pottery industry the same practice is followed except they take into consideration there—I mean now I am going into more detail about what they take into consideration—they take into consideration, for instance, the cost of materials used by the employee that he pays for; they take into consideration any lost time; they take into consideration the average amount of spoiled ware—that is, they don't assume any worker is perfect; they take into consideration any deductions of any sort on an average basis; they take into consideration any time that the employee must spend doing work which produces no goods; and they figure how much actual working time is left, and in that time at the arbitrary piece rate, he must produce a living wage.

Q. What is the general arrangement—

Mr. Lamb: I request that answer be stricken.

The Master: Overruled.

Q. What is the general arrangement in the pottery industry as to furnishing of such items as sponges, brushes, scissors, and other materials or tools that the employees use?

Mr. Lamb: Objection.

The Master: Overruled.

A. In the pottery industry the employees furnish those items; that is, they pay for them. In some cases they buy themselves, and in some cases the employer acts as the purchasing agent for them—sort of a store keeper.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Do you frequently find the pottery selling such items to its employees?

A. Oh, yes.

Q. Is it customary in the pottery industry to pay a worker for crooked or chipped ware, or ware which for other reasons is imperfect?

A. The practice is to deduct—

Mr. Lamb: Objection.

A. —for that.

The Master: Overruled.

Mr. Lamb: I ask that the answer be stricken.

The Master: They deduct for that, or just fail to pay for that?

A. Both practices. It depends on their accounting system. They mean the same thing in the end.

The Master: Are you familiar with the question of whether or—the practices in other industries with regard to whether or not the employee has to furnish certain tools used in the industry? For example, let us take a tool in the machine shops. You are familiar with some machine shop practices?

A. Yes.

Q. What are the gauges the employees use to measure the diameter of the shaft, for instance?

A. Micrometers.

The Master: Micrometers. Do you know whether the employees furnish those?

A. The employees in a machine shop—the tools used by an expert machinist are always furnished by the employee.

The Master: By an expert machinist?

A. By a fellow who qualifies under the name of "machinist." In other words, one who uses tools (Tr. 2970) used in any shop, put it that way, tools of his trade. If there are expensive gauges to be used in the work which are of no use in another plant, let us say, then the company furnishes them, but if they are general trade tools, the employee furnishes them.

The Master: Well, take non-skilled work, where it is on a production line, for example, an employee, I suppose, would be using wrenches.

A. Specially shaped.

The Master: Specially shaped for the particular job?

A. Yes.

The Master: Those would be furnished by the employer?

A. That is right. But, if they are standard wrenches used by a semi-skilled worker, the employee would pay for them, and own them.

The Master: Is that the general practice?

A. That is the general practice.

The Master: Do these companies that you are familiar with have a supply in the plant where they sell them to employees, or do they go out and buy them?

A. No, in the cases I can think of right now, the employer doesn't carry them in stock, but he orders them from a wholesale hardware company for the employee, and bills the employee for whatever he pays for them, and he generally waits until he gets an order for quite a few at a time, unless it is case of an individual micrometer; in that case he orders it right away, because no other employee might request it for a year.

The Master: Does he bill the employee at the actual out of pocket cost to him, or does he mark something up for overhead, in your experience?

A. There again it varies a little bit. If there is quite a handling charge connected with it, like if there is an extended practice in regard to tools, so that there is a receiving clerk who spends quite a bit of his time at it, they

might make a small arbitrary charge there, otherwise they charge the actual out of pocket cost.

Q. (By Mr. Cooper) In making your inspections of potteries, have you ever run into anything referred to as a deduction for bisque grinding?

A. Yes.

Q. Will you describe to the Court what that is, as you have found it to exist in potteries?

Mr. Lamb: Objection.

The Master: Overruled.

A. In some plants the employee can do his own bisque grinding; in that event he—of course he cuts down the number of pieces he makes; and in other plants, by Union agreement, the employer must furnish a man to do the bisque grinding, and the employee is charged with his time. In other words, the employee—the potter pays for the bisque grinding done by the other employee, and there is a deduction made on the sheet on which they figure the piece work earnings.

Mr. Lamb: I ask that the answer be stricken on the ground there is no reference made to persons referred to—no mention made to the persons referred to.

The Master: I will wait for cross examination on that.

Q. (By Mr. Cooper) Is there any common practice as to a similar deduction for carrying boards?

A. Yes, there is.

Q. Would you describe that situation?

Mr. Lamb: I object to that, an objection at least for the record.

Q. May I re-state my question? Will you describe that situation insofar as you find it to exist as a common practice?

A. It is identical with that of bisque grinding. The potter group pays someone else indirectly through the employer, of course, for carrying the boards in order to save them time at their work, on the theory that they can get someone to carry the boards cheaper than they could do it themselves.

The Master: Well, you say it is the same as bisque grinding; you said both practices were with bisque grinding; are both practices with boards, or does the employer hire somebody else to carry the boards in all plants?

A. That depends on what the local Union does. In those plants where I found that the potters make very high wages, the union either through the—in the agreement itself or through separate grievance settlement has agreed to furnish the board carriers, and that the employees will pay for them.

The Master: Are you familiar with some plants where the employer furnishes the board carriers without deduction from the employees.

A. I don't know of any plant.

The Master: You have spoken of Unions several times; I will at least ask you this as to whether these Unions you refer to were AFL, CIO, or some other kind of Union?

A. They are AFL International.

The Master: Those are the only ones you are familiar with in the pottery?

A. Yes, all the pottery plants I have been in have AFL Union.

Mr. Lamb: May I ask him what A. F. of L. International he is referring to?

The Master: Yes.

A. Well, I am not sure about the full name. It is the Brotherhood of Operative Potters, I think, or very close to that name.

Mr. Cooper: I think that incidentally has already been covered.

Q. (By Mr. Cooper) Is it customary in a pottery plant to find decalcomania girls?

A. Yes.

Q. Are they customarily paid—

Mr. Lamb (Interposing) I want an objection on that.

The Master: Overruled.

Q. (By Mr. Cooper) Are they customarily paid at any separate rate for time spent in cutting up decalcomania patterns?

Mr. Lamb: Objection.

The Master: Overruled.

A. No, they are not. That is part of their work. The piece rate is set with that in mind, that they will have to spend some time at that.

Q. (By Mr. Cooper) As an inspector with the Wage-Hour Division, Mr. Fox, were you familiar with the policy of the division as to treatment of any odd minutes spent in the plant before or after work?

Mr. Lamb: Objection. • • •

The Master: There are two questions here. One is a question of evidence, the question whether the Administrator's policy is evidence at all, material at all in the case, whether it can be presented as evidence in the case either on behalf of the defendant or the plaintiff, to show that a particular practice followed by the defendant is a correct practice under the Act or an incorrect practice.

I would assume that the published opinions of the Administrator and instructions and matters of that sort are part of the body that the Court can look to in deciding a case, just as we can look to the Attorney-Generals' opinions, and while Attorney-Generals' opinions are not opinions of courts and they are not binding on the courts, whether or not it is admissible as evidence in the case is another matter.

Then beyond that we have the question of the best evidence rule, in that the instructions were embodied here in the form of a written instrument coming down from Washington, which may have been the result of negotiations and discussions and regional conferences or other conferences of the staff, but still the instructions that were followed were those coming from or embodied in a written letter.

It is possible the witness might know of the practices of the Administrator apart from written instructions, but

I doubt if that is relevant in this proceeding. If you had the letter here, I would be inclined to admit that, but without the letter I think there is so much doubt about it that I will exclude the evidence.

If you desire, you may have a special record made of the testimony on this subject, pursuant to Rule 43-C of the Federal Rules of Civil Procedure, so that if some other court should deem it relevant, that is, some reviewing court should deem it relevant and require the matter to be gone into, it will be unnecessary to call this particular witness back.

Mr. Cooper: I would like to ask one preliminary question, if the Court please, that I think may have some bearing here.

Q. (By Mr. Cooper) Do you happen to recall, Mr. Fox, the date of the first issuance of this inspection-field letter that you spoke of?

A. It would be in the spring—that is my memory—the spring of 1940.

Q. Whether or not prior to that time there was a written record as to the practice or policy under which inspectors operated in making inspections? • • •

The Witness: Perhaps if I gave an explanation—

Mr. Lamb (Interposing): Just a second, please. • • •

The Master (Interposing): I will take his explanation just the same.

A. (Continuing) —in Washington they had written what they call an inspection manual, which was a guide to inspectors. It outlined a procedure for making an inspection. You were supposed to examine these records first, and those records second, and look for this and look for that. Certain things were taken for granted, I suppose— • • •

A. For instance, in the—in one part of the manual it said employees must be questioned, and at that time when they wrote it it was taken for granted that the inspector would know how to question the employees, or know which employees to question, and so forth. Then when it was found that some inspectors because of lack of experience

in most cases, didn't do it the proper way, individual instructions would come out refining this manual.

Now, the same thing when it comes to counting the number of hours worked. The manual simply said "Find out how many hours were worked," that is all the manual said. So, some inspectors did some very annoying things in estimating the number of hours worked.

This letter was for the purpose of using the experience of all inspectors to get some uniformity in the matter of counting the number of hours worked.

The Master: Well, I think with his explanation I will adhere to my same ruling. I think the explanation indicates that there were a variety of practices followed by individual inspectors and there was no instruction from Washington which covered the matter clearly before this letter came down. The letter was obviously the result of negotiations and conferences, but at the same time the instructions were embodied in the letter.

I will make a special record of this under Rule 43-C by holding it not admissible unless you get that letter.

Mr. Cooper: Could I ask a few more questions before I make a separate record here, your Honor, just to obtain a ruling on the main record, and I think I can be very rapid about it.

The Master: All right.

Q. (By Mr. Cooper) Mr. Fox, when you were an inspector with the Wage-Hour Division, in connection with making inspections did you take occasion to talk to employees? • • •

A. Yes, (Tr. 2971) employees were interviewed on all inspections.

Q. Do you know whether or not, say, in the year 1939 other inspectors of the Wage and Hour Division operating in the Ohio and Michigan region did the same thing?

Mr. Lamb: Objection.

A. I know that of my own knowledge.

Mr. Lamb: Just a second, until we dispose of the objection.

The Master: I don't see that it does any harm one way or the other; I will take his answer.

A. Of my own knowledge, I know that all inspections the inspectors interviewed varying numbers of employees.

• • •

Q. (By Mr. Cooper) And what was the purpose of these interviews with employees? • • •

A. To substantiate the records of the company.

Q. (By Mr. Cooper) With respect particularly to what? • • •

A. Yes. Employees were interviewed to find out if the hours recorded by the employer were the hours actually worked, if the pay received as shown by the records was the pay actually received by the employees, and they were also interviewed to find out if there were any practices of the company which were not reflected in the records.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Mr. Cooper: Now, on the separate record, if the Court please, I would like to ask Mr. Fox whether, as an inspector with the wage and hour division, he was familiar with the policy of the division as to the treatment of the odd minutes spent in the plant by employees either before or after work.

Mr. Lamb: There is an objection. First as to the incompetency, and secondly, the inability of this witness to testify as to the administrator's policies, and thirdly the fact that this witness is not competent as a representative of the wage and hour division to testify as to their policies.

The Master: I will sustain the objection, but I will take the evidence pursuant to Rule 43-C.

Mr. Lamb: Is it necessary under this rule for me to state an objection to each question?

The Master: No, I don't think so, because your objection has been sustained. • • •

A. Yes, I was familiar with that.

Q. (By Mr. Cooper) What was that customary practice?

A. The practice was to find out what time the employee actually started to do some work in those cases where the time clock card was punched ahead of the regular starting time, and the same procedure for the punch in the evening. The inspector was to find out whether the employee had actually done any work after the regular quitting time in all cases where the clock card was punched 15 or 20 minutes after the regular quitting time. In other words, we were told to make no assumptions that merely because it was punched, it was worked. We were told to find out.

Q. Was that the practice during the time that you were with the division?

A. Yes.

Q. Do you know whether or not that is still the practice of the division?

A. I have good reason for knowing that that is the practice.

Mr. Cooper: Now, I would like to go back on the regular record, if the Court please.

The Master: All right.

Mr. Lamb: I want the record to show that there has been an objection to the preceding testimony, and the request is made that there is a motion to dismiss any such evidence from consideration by the Master or the Court.

The Master: The record will so indicate.

Mr. Lamb: As this will not be the subject of cross examination, I want to state at this time that the plaintiffs deny that that practice is in effect, or ever has been in effect, or the witness' relation of the administrator's policies is a correct one.

The Master: Well, you can cross examine on that matter within the ruling that has been made, that it is to be taken as a special record. Perhaps I ought to stop now to give you a chance to cross examine on that, or you can cross examine after you complete your regular cross examination.

Mr. Lamb: I don't want to make competent what the Master ruled is incompetent.

The Master: That is up to you. I don't want you to assume I am preventing you from cross examining.

Mr. Cooper: Off the record.

(Discussion off the record.)

Q. (By Mr. Cooper) Do you know, Mr. Fox, whether or not there are any large number of plants which do not use time clocks at all in computing hours worked?

Mr. Lamb: Objection.

The Master: I will overrule that.

A. In my experience, there is only one plant of over 200 employees that didn't use time clock cards, and that was a refining company. • • •

Q. (By Mr. Cooper) By the way, are you a member of the bar?

A. Yes. Ohio Bar.

Q. Does the Industrial Advisers Bureau operate under any particular arrangements with the various plants that it inspects?

A. Yes, we have a yearly contract with all of the plants.

Q. Let me ask you whether or not in making a contract wi... a plant which is retaining the services of your organization there is any stipulation as to confidential or non-confidential treatment of information which comes to you respecting a particular fact in a particular plant?

A. Yes.

Mr. Lamb: Objection.

The Master: I will take the answer. It may not be binding upon the court. I don't know.

A. In some cases, it is necessary to state it in that many words, that their affairs are their own affairs, and their name will not be used except with their permission.

Mr. Cooper: That concludes the direct examination, your Honor.

Cross Examination

By Mr. Lamb: • • •

Q. What is your business address?

A. 714 N.B.C. Building, Cleveland, Ohio.

Q. 714 N.B.C. Building. That is the address of the Industrial Advisers Bureau, Incorporated?

A. That is right.

Q. And are you the sole person connected with that, or are there others?

A. No. We employ about 35 people.

Q. And do you furnish labor spies?

Mr. Cooper: Objection.

A. We do no labor relations work whatsoever.

Mr. Cooper: I think it is highly immaterial.

The Master: What was the answer? He has already answered it.

A. We do no labor relations work whatsoever. • • •

Q. (By Mr. Lamb) This is an Ohio corporation, is it, this Industrial Advisers Bureau, Incorporated?

A. That is right.

Q. Are you an officer of it?

A. No.

Q. An employee?

A. An employee.

The Master: What is your position with the company?

A. I am in charge of the wage and hour service.

Q. You are getting paid for testifying today, are you?

A. Yes.

Q. By whom?

A. By the law firm of Beaumont, Smith & Harris.

Q. With which Mr. Cooper, who appears at this counsel table, is associated?

A. That is right.

Q. How did they happen to get in touch with you, Mr. Fox?

A. As I understand it, I was recommended to them by another lawyer in Toledo. • • •

A. No, he never mentioned Mt. Clemens Pottery, or Beaumont, Smith & Harris' name to me.

Q. Didn't you say you got in touch with Beaumont, Smith & Harris because of Mr. Block?

A. No, here is what happened; some time previously I had some business with Henry Block that had nothing to do with this case. Some time after that I received a letter from Beaumont, Smith & Harris, and Beaumont, Smith & Harris told me that this Toledo attorney had recommended me.

Q. And do you know that Mr. Block and Mr. Cooper are attorneys for the Manufacturers Association?

A. No.

Q. Did you advise Mr. Block that you were testifying in this case?

A. No.

Q. Now, you said that you had five or six potteries, knowledge of five or six potteries that your firm represented?

A. That is right.

Q. Will you give us the names of the potteries that your corporation represents?

Mr. Cooper: We object, if the Court please. • • •

The Witness: I have no objection in giving the names of the potteries.

The Master: The potteries in particular are very closely related to this case, since it is a case that involves potteries, and I will require him to divulge the names of the potteries.

Mr. Nunneley: The witness says he has no objection to that on the potteries.

A. My only objection was just to giving the name of any client.

The Master: When you get into the names of other clients, ay be too remote. But he says what he is interested n is the potteries. So will you give us the names of the potteries? • • •

A. There is the Scio Pottery Company. • • •

Q. Whereabouts is that located?

A. Scio, Ohio.

Q. And do you have a contract with the Scio Ohio Pottery Company?

Mr. Nunneley: Objection. The Court has ruled that out. It doesn't make any difference whether he has. • • •

The Master: What chance did you have to observe the Scio, Ohio Pottery Company?

A. I spent several days there at different times. I had a chance to observe everything I wanted to know about the observation.

Q. (By Mr. Lamb) When did you do that?

A. What was the question?

Q. When did you have those several days there?

A. Once, about a year ago, and then about three weeks after that, about three months after that, then at the end of another three months.

Q. So I take it you didn't have occasion to see it as an inspector of the Wage and Hour Division? • • •

A. No.

Q. (By Mr. Lamb) In what capacity were you acting in making this observation? • • •

A. Both as an employee of Industrial Advisers Bureau and as adviser to the company. • • •

Q. (By Mr. Lamb) What other companies in the pottery business do you have contact with and knowledge of?

A. The Cronin China Company. • • •

Q. Where is that located?

A. Minerva, Ohio. • • •

A. As an employee of Industrial Advisers Bureau and as an adviser to the Cronin Company.

Q. Both of those companies are located in Ohio, did you say?

A. Yes.

Q. Have you any experience with pottery companies in Michigan?

A. No.

Q. I didn't ask you whether you had observed the em-

ployment relationships existing at the Mt. Clemens Pottery Company.

A. No, you didn't ask it.

Q. Have you ever visited the Mt. Clemens Pottery Company?

A. No.

Q. You are not able to tell us what time the employees start to work after they have punched the time clock?

A. No.

Q. And you are not able to tell us whether or not the employees punch their—take off their coats and hang them up, and hats—

A. (Interposing) I have answered that question.

Q. Just a second. And, you haven't observed whether or not the employees take off their coats and hang them up in the cloak room, take off their hats and hang them up in the cloak room, and prepare themselves for work before punching the time clock at the Mt. Clemens Pottery Company?

A. No.

Q. Do the employees in your experience in these industrial companies that you have referred to, where they have a situation such as that that you have outlined, where employees may appear a half-hour before the regular starting time, in those companies can you advise us whether or not they take off their coats and visit a cloak room, and so forth, prepare themselves for work prior to beginning their productive labors?

A. They do. • • •

The Master: First, I would like to get this clear as to whether it is the witness' testimony—is it your testimony that in the plants you have had occasion to observe the employees take off their hats and coats and put on whatever uniforms they have to put on and get themselves ready for production work after punching the time clock?

A. In some plants, yes, and in some, no. It depends upon whether the lockers are ahead of the time clock or in back of the time clock. • • •

Mr. Lamb: Went into the cloak room and prepared themselves for productive work prior to punching the time clock. I am asking this witness if he can point to a plant in the City of Detroit, or in Mt. Clemens, Michigan, where the employees prepared themselves for productive work by visiting the cloak room prior to the time they punched the time clock.

The Master: You are speaking now only—that means visiting the cloak room.

Mr. Lamb: That is right. * * *

A. Well, I recall of one.

Q. (By Mr. Lamb) What is that?

A. Detroit Ball-Bearing Company.

Q. Now, tell us what your observation about that is.

A. They hang up their coats there--they hang up their coats and then they punch the clock and then go to work.

Q. Have you seen that? * * *

A. I have never been in a plant in Detroit where I observed with my own eyes the practice of hanging up their coats before punching the time clock.

The Master: Have you observed some where they punch the time clock and then hung up their coats?

A. Yes. * * *

Q. (By Mr. Lamb) I don't want to limit this to Detroit, but I want to include the entire State of Michigan. Do you know of any situation where the employees have hung up their coats and visited the cloak rooms and hung up their hats, and so forth, prior to punching the time clock? Anything that you have observed?

A. Yes.

Q. What plant was that?

A. Norwalk Truck Line.

Q. Norwalk Truck Line?

A. Yes.

Q. Whereabouts is that located?

A. Detroit.

Q. Detroit?

A. And Lansing.

Q. That is a hauling outfit, is it?

A. Yes.

Q. In that case the employees visit the cloak room and hang up their hats and then punch the time clock, is that right?

A. That is right.

The Master: Is that in the Detroit plant or the Lansing plant?

A. Both.

The Master: So is that firm an exception to your former statement that you hadn't personally observed any plants?

A. I hadn't remembered—I mean, it takes quite a while to start reviewing all the companies.

The Master: I can understand that.

A. I thought of the Lansing one first, and then I was reminded of the Detroit observation.

The Master: You have observed that in Detroit?

A. Yes.

Q. (By Mr. Lamb) Do they have a productive line there, or will you tell us any company that you have observed in the Detroit area or Mt. Clemens, Michigan, area, where there is a productive line or a production line, where the employees take off their coats and visit the cloak rooms and hang up their coats and hang up their hats, and so forth, prior to punching the time clock?

A. I can't think of any.

Q. As I understand it, you have never even seen the Mt. Clemens plant, have you?

A. That is right.

Q. That is, of the Mt. Clemens Pottery Company; is that correct?

A. That is right.

Q. And you have no knowledge of whether the employees there take off their coats and hats and visit the cloak room and prepare themselves for productive work prior to punching the time clock?

A. I have no such knowledge.

Q. And you haven't any knowledge of the instructions of the company with reference to the time an employee shall report to work; have you?

A. I have no such knowledge.

Q. And you haven't any knowledge of whether or not the company the day prior to the working day advises the employees to report at 14 minutes of seven or 14 minutes of six or any other particular time, have you?

A. I know nothing of my own information about the operations of the Mt. Clemens Pottery.

Q. And having—not having such knowledge, of course, you have no knowledge of its kinship with practices in other potteries or in other plants?

A. Naturally.

Q. Is that correct?

A. That is correct.

Q. You have no such knowledge, is that correct?

A. That is correct.

Q. Do you have knowledge whether this Mt. Clemens Pottery Company has any Union agreements?

A. I don't have any personal knowledge of it.

Q. And so you can't advise us whether the practices followed by the Mt. Clemens Pottery Company are similar to those of companies that do or do not have union contracts, is that correct?

A. That is correct. * * *

Q. (By Mr. Lamb) Now, you gave some testimony this morning relative to time employees are compensated for in certain industries. Did you base that knowledge just on your capacity as an employee of this Industrial Advisers Corporation, Inc.?

A. No, it wasn't based only on that experience.

Q. What other experience did you base that knowledge or testimony on?

A. Also on my experience as a federal inspector for the Wage-Hour Division. * * *

The Master: Did you base your testimony as to the

practices you followed in payment of time to employees by employers upon any court decisions, among other things?

A. No.

Q. (By Mr. Lamb) Well, are you familiar with any court decisions on this very important matter of the time that employees should be paid for?

Mr. Cooper: I object, it seems to me we are getting pretty far afield. * * *

The Master (Interposing) I think so. If this witness was coming in here to tell what the Ohio law is, because foreign law has to be proved, as a matter of fact, and he is testifying as a lawyer, you would certainly be subject to cross-examination as to all the relevant Ohio decisions, and what he knows about them, what his interpretation of them is, but here I don't think he is testifying as to a question of law at all. He stated he wasn't basing his answers upon any court decisions. He might never have read a court decision and still might be able to testify as to the practices. It may turn out the practices are all illegal and contrary to some court decision, in which case the court decision would govern, but I don't think it is proper to question this witness about his knowledge of the law and cases, and I will so hold.

Mr. Lamb: May I make a proffer of the testimony of what this witness would say, if he were permitted to answer?

The Master: Yes, you can make any statement you wish on that.

Mr. Lamb: The witness, if permitted to answer, would testify he did not know about the decisions in the Federal courts covering this situation involving the payment required by employers to employees for time spent on the premises of the employer or in the employer's employment.

Also this witness would admit that he has no knowledge of the law or the administrator's ruling covering the subject of requirement of employers to pay employees for

time on the employer's premises under the employer's direction.

Q. (By Mr. Lamb) I take it you are not able to tell us how far the employees of the Mt. Clemens Pottery Company are located from the time clock?

A. I know nothing about the employees of the Mt. Clemens Pottery Company.

Q. So you wouldn't be able to tell us, would you, whether the employees of the Mt. Clemens Pottery Company take off their coats and hats, prepare themselves for work and then punch the time clock and within a minute thereafter are engaged in productive work for the employer, Mt. Clemens Pottery Company?

Mr. Nunneley: We object to the question as being, first, a repetition— • • •

A. I have no personal knowledge of the practices of the Mt. Clemens Pottery Company.

Q. (By Mr. Lamb) So you wouldn't be able to tell us whether or not the employees followed that practice in the Mt. Clemens plant, would you?

A. No.

Q. And not knowing the practice of the employees of the Mt. Clemens Pottery Company in that respect, you would not be able to say whether that practice was the same or different from that followed in other potteries or other plants, would you?

A. No.

Q. Are you familiar with the practice of the Mt. Clemens Pottery Company in regard to selling employees or charging employees for materials such as sponges, pails, gloves, scrapers, and so forth?

A. I have no personal knowledge of the activities at the Mt. Clemens Pottery Company.

Q. Now, having no personal knowledge of the practice followed by the Mt. Clemens Pottery Company in charging its employees for any of these articles you wouldn't, therefore, be in a position to advise, as to whether that practice is the same or different from that

followed in other plants and potteries or other industries, would you?

A. No.

Q. Do you have any knowledge about the method of write-up on articles sold by the Mt. Clemens Pottery Company?

A. I have no personal knowledge of the activities of the Mt. Clemens Pottery Company.

Q. So that you wouldn't, therefore, be in a position to advise us whether the practice of marking up the products sold to the employees of the Mt. Clemens Pottery Company is similar to or different from that practice followed in other plants that you may have testified about, would you?

A. No.

Q. You are not in a position to say whether it is true or not that the Mt. Clemens Pottery Company has a uniform rule of marking up its products sold to employees on the basis of 33 1/3 per cent increase over the cost price, have you?

A. I know nothing about it.

Q. And you have no knowledge of the amount of profit which the Mt. Clemens Pottery Company derive from the sale of its products such as gloves, pails, sponges, and so forth, to its employees?

A. I know nothing about that.

Q. You don't say, or mean to infer that you have ever talked to the employees, or any employees of the Mt. Clemens Pottery Company, relative to whether or not they have been reimbursed for the time actually spent on productive work, have you?

A. No.

Q. And it is a fact that you have never talked to any employees of the Mt. Clemens Pottery Company to determine whether or not the Mt. Clemens Pottery Company pays the employees for the time actually spent in the employer's service?

A. That is a fact.

Q. This morning you testified that the payroll de-

partment in some plants that you know about, looks at the time clock cards and decides whether or not to dock the employee. Would you care to advise us what companies you observed that practice followed in?

A. I think I was particular about what I said they docked them for. I didn't say they just docked them.

Q. You said when they were late, is that correct?

A. That is right.

Q. Now, will you advise us what companies that you have personal knowledge of, wherein the payroll department looks at the time clock cards and decides whether or not to dock the employee?

A. Yes, I can give you the name of some companies.

Q. If you will, please?

A. White Motor Company.

Q. White Motor Company, in Cleveland?

A. Yes.

Q. Okay, any other?

A. Michigan Steel Castings Company, of Detroit.

Q. Michigan Steel Castings Company. Now, could you advise whether that little job of docking the employees is done as the result of any advice you may have given to the company?

A. No, it is done as a result of the Union contract.

Q. Which Union are you referring to in regard to Michigan Steel Castings Company?

A. Which Union?

Q. Yes.

A. I don't know the Local number.

Q. Would you tell us what the union is?

The Master: As to whether it is a CIO or A. F. of L.

Q. (By Mr. Lamb) Would it have been the UAW-CIO?

A. I think it is.

Q. All right, and the White Motor Company also?

A. Yes.

Q. Has a contract with the UAW-CIO, is that correct?

A. That is correct.

Q. Now, did you say, or do you say that you ever gave any advice to that effect?

A. No, no, I found those things in effect.

Q. Did you advise any employees, where you found such a situation in existence, as to their rights on the wage-hour law?

A. Oh, yes.

Q. Did you advise them that it is up—

Mr. Nunneley: Did you say the employees?

The Master: Is that what you meant?

Q. (By Mr. Lamb) Did you advise any employees?

A. Yes.

Q. Can you refer us to the section of the wage-hour law, wherein an employer is given the right to make what you call a docking from the payroll of the employees for being late, or for any other reason?

A. Yes.

Q. Will you give us the section of the law?

A. Section six.

Q. And would you tell us what particular part you have reference to?

A. It says the employer shall pay to each of his employees who is engaged in commerce or the production of goods for commerce, a wage at the rate of at least 30 cents an hour for this year.

Q. Well, now, this is interesting. You say as a person who came over here to testify about this law—

Mr. Nunneley: He didn't come over here to testify about the law.

Mr. Lamb: Well, it is evident he hasn't too much experience with it, but, do you say section six of the Fair Labor Standards Act of 1938, gives the employer the right to make such docking as he or his payroll department may determine, as long as the compensation paid to the employee, for a 40-hour work week, amounts to an excess of 30 cents an hour?

A. It is my opinion.

Mr. Nunneley: The question calls for a legal opinion, and it is not a proper subject of cross examination.

Mr. Lamb: I am asking that this part of his testimony,

the question and answer be saved, I want to have it marked where I can get it.

You say it is your opinion that as long as an employer pays an employee a minimum wage for a 40-hour work week, that he can make such docking from the payroll of the employee as he or his payroll department may determine, is that correct?

A. No. • • •

Q. (By Mr. Lamb) You said you found few differences in the practices followed in respect to computing time of the Mt. Clemens Pottery Company and that followed in other pottery companies. Have you had an opportunity to observe the various records and methods of computation and other supporting evidence wherein the Mt. Clemens Pottery Company makes computations of time worked by employees? • • •

A. Yes, I said I examined a sprinkling of time cards. Picked at random.

Q. (By Mr. Lamb) Of the Mt. Clemens Pottery Company?

A. Of the Mt. Clemens Pottery Company.

Q. And compared it with time cards of other companies? • • •

A. And that the extensions in the right-hand margin of the elapsed time worked seemed to be computed in the same manner that they were in other potteries, and in other plants generally.

The Master: That is my recollection of what he testified to.

Q. (By Mr. Lamb) Now, what other potteries are you referring to?

A. Well, the two I gave you, for instance. Do you want some more?

Q. The Corono China Company, is that one of them?

A. That is one of them.

Q. Now, what I am interested in knowing, is what your personal knowledge of the Mt. Clemens method of computation is. Did you observe all of the records by which the company makes its computation of the cards?

A. No, all I saw was some time cards picked at random. I saw the time that was punched on the cards. I saw the extension in pencil or read crayon in the right-hand margin. That is all I saw.

Q. Did you observe what the company does in regard to down time?

A. No.

Q. Where for lack of materials the employees were required to stand at their machines?

A. No.

Q. Are you familiar with the practice—

A. I gave you the sum total of my knowledge.

Q. Just a second. Are you familiar with the practice of the Mt. Clemens Pottery Company in that respect?

A. No.

Q. Are you familiar with the practice of the Mt. Clemens Pottery Company when employees report at varying times, instead of, we will say, at 7 o'clock each morning, that they report at 6 one morning, 8 the next morning, 6:30 the following morning? Are you familiar with the practice in that respect?

A. On some of the cards I looked at, the employee did not report, very obviously, at the same time each morning.

Q. That is right. Now, did you notice the practice of the Mt. Clemens Pottery Company in that respect?

A. I know what the punch in time was, the punch out times, and I noticed what the extension was.

Q. Did you notice that irrespective of what time of the day an employee punched the time clock, whether it was 11:33, or 6:18, any practice in respect to paying the employee only from the succeeding quarter hour? Did you notice that practice?

A. I noticed that there were some cases where, if an employee had punched in after 6:30, say at 6:49—or 6:43, or 6:40, that very obviously the extension must have included the time from 6:45.

Q. Did you notice the time cards where the employee checked in at 6:46 each day for several weeks?

A. No, I don't remember that—

Q. Did you notice what the practice was in that respect?

A. I don't remember any 6:46. There seemed to be more 6:50's than anything else.

Q. That is your opinion? How many cards did you see?

A. Oh, maybe 30.

Q. Did you see any cards of employees who checked in at 6:46 every morning for several weeks?

A. No, I didn't. I said I only examined 30 cards.

Q. Are you familiar with the practice of the company that if an employee did check in at 6:46, that the company would only pay him from 7 o'clock?

A. I have no knowledge of that. • • •

The Master: There is no—we might as well inform the witness—there isn't any dispute about the practice that was followed by the Mt. Clemens Pottery Company; they paid from the succeeding quarter hour when the time clock card was punched in the morning, to the preceding quarter hour punched out at noon and the same practice was followed out in the afternoon.

A. If I can accept that as a fact, I can answer questions on that basis.

Mr. Nunneley: Your Honor means they compute time from that.

The Master: I mean they compute time from that; I don't know just how I worded my statement.

Q. (By Mr. Lamb) As I understand it, you haven't from any personal knowledge certainly qualified yourself to testify as to how long it takes an employee in the Mt. Clemens Pottery Company, after punching the time clock, to be fully engaged in production work, have you?

A. I know nothing about the Mt. Clemens Pottery Company.

Q. And you know nothing about the practice of the employer in advising the employee to report at a specific time, and to start work at a specific time in the day, have you?

A. At what company?

Q. The Mt. Clemens Pottery Company?

A. No.

The Master: We will take a recess.

(Recess.)

Q. (By Mr. Lamb) Mr. Fox, I just had occasion to talk to one of your former superiors. Were you dismissed from the wage and hour division as an inspector, because you falsified certain records?

A. No.

Q. You say you were not discharged from the wage and hour division because you falsified your civil service application?

A. No.

Q. You say you were not so notified by the division?

A. That is right, I was not.

Q. Your answer is that you were not discharged from the wage and hour division because you falsified these records?

A. That is my answer.

Q. When did you leave the wage and hour division?

A. October 16, 1940.

Q. And you did not receive a notice from the wage and hour division, Mr. Aaron Cohen, or other officials of the Cleveland office of the Wage and Hour Division, because you falsified your civil service application?

A. I did not receive such notice.

Q. Orally or in writing?

A. Orally or in writing.

Q. Have you testified as an expert in the Federal courts of Detroit before?

A. No.

Q. Now, as I understand your testimony, you do not wish this court to understand that your statements in reference to any practice of the Mt. Clemens Pottery Company is based on any personal observation?

A. I stated before I have no personal observation of the practices of the Mt. Clemens Pottery Company.

Q. And it is not your intention in view of the fact that you have no personal knowledge of the practices of the

Mt. Clemens Pottery Company to lead this court to understand that its practices are similar to those in other plants in this or other industries, is it?

A. I am not trying to compare the Mt. Clemens Pottery with any other pottery.

Q. Or other plants?

A. Or other plants. I can add to that my testimony is confined to things that happened in industry exclusive of the Mt. Clemens Pottery.

Q. Of course, you don't intend to lead this Court to understand that in the absence of knowledge of what the practices are in the Mt. Clemens Pottery Company, that those practices would be the same as in the other plants of which you spoke?

A. For all I know of it personally, the practices in Mt. Clemens might be the same as they are in other plants.

Q. And they might be different, is that correct?

A. They might be different.

The Master: I think that is nailed down pretty clearly now.

Mr. Lamb: I think so.

The Master: I think I will restrain any more questions along that line. • • •

CHARLES E. DOLL, SR., was thereupon recalled as a witness herein, and having been previously duly sworn, testified as follows:

Direct Examination (Continued)

By Mr. Cooper:

A. Your Honor, before I begin my examination, I was reading over the transcript of my testimony on Friday, and I want to correct just one place in there where I made an error as to numbers. I stated that the number of people going through the time clock "A" at any one time

was approximately 300. I should have said approximately 200.

The Master: That is the 7 o'clock shift, that is, the 7 o'clock shift is the big shift?

A. The 6 o'clock shift.

The Master: Or, the 6 o'clock shift is the shift where the most goes through.

A. That is right.

The Master: Approximately 200.

A. That is right; I said approximately 300; I should have said approximately 200; it was my error.

The Master: Have you consulted some records to refresh your recollection?

A. No, I realize it when I read it over.

Q. (By Mr. Cooper) I think when the examination was terminated the other day, Mr. Doll, you were discussing the geographical area in which the employees of the pottery live. Have you had occasion to observe approximately what area the employees do reside in?

A. Our employees live within the County of Macomb, which would mean that they are drawn from practically any part of Macomb County, which would mean that they may come from right in the city of Mt. Clemens, they may come from distances 5, 10, 15 to 20 miles away.

Q. Have you observed how they come to work?

A. The majority of them come doubled up, or come as near as possible with a full car, picking up—the person running the car picking up others as he or she makes the trip.

Q. That is, most of them arrive in automobiles?

A. Yes.

Q. And ordinarily a number of employees in a car?

A. That is correct.

Q. And what has been your observation as to what time of day these automobiles arrive with reference to the starting time?

Mr. Lamb: Objection.

The Master: Overruled.

A. They will arrive any time from an hour before starting time up to within a few minutes of starting time.

* * *

Q. (By Mr. Cooper) Are there many of them that arrive just a few minutes before starting time?

A. A smaller number arrive shortly before starting time.

Q. Now, have you had occasion to observe whether or not it is a matter of frequent occurrence for employees starting at different times to come to the plant in the same car?

Mr. Lamb: Objection.

The Master: It is a rather leading form of question, I think. In the first place, do you know whether employees starting work at different times come in the same car to the plant?

A. It frequently happens, your Honor, that people who will not be starting work until 7 o'clock will ride in with someone in the shift that is starting at 6 o'clock. * * *

Q. Is there a distinction between dinner ware and other types of pottery, Mr. Doll?

A. Dinner ware refers definitely to articles used for eating purposes on the table. Other types of pottery can consist of art goods, ornaments, sanitary items. There is quite a long range of goods that come under the general term of "pottery," but dinner ware refers specifically to table ware items.

Q. Which type of pottery does the Mt. Clemens Pottery Company make?

A. We manufacture popular-priced line of dinner ware exclusively.

Q. About what percentage of the dinner ware production in the United States is represented by the production of the Mt. Clemens Pottery Company?

A. About 12 per cent.

Q. Do you know how the other 88 per cent of the dinner ware industry operates, as to labor contracts?

Mr. Lamb: Objection. * * *

The Master: Well, I will take his answer.

A. Nearly all of the remaining 88 per cent operate under collective bargaining agreement with the National Brotherhood of Operative Potters.

Mr. Lamb: I will ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Cooper) Did the Mt. Clemens Pottery Company ever have a collective agreement with that Union? • • •

A. Yes, with the National Brotherhood of Operative Potters, previous to 1921.

Q. (By Mr. Cooper) Is the company operating under a collective agreement now, Mr. Doll?

A. It is.

Q. Did you have anything to do with the negotiation of that contract?

A. I did.

Q. In the negotiation of that contract, Mr. Doll, what if anything was said as to the method of computing hours worked?

Mr. Lamb: Objection.

The Master: It does seem to me that the question that you objected to that Mr. Lamb asked Mr. Doll on his cross examination was whether or not the company was engaged in collective bargaining with its employees. It is either relevant—it is either proper on both sides or on neither side. • • •

Mr. Cooper: Let me for the present, then, withdraw that question, if the Court please, and go on.

Q. (By Mr. Cooper) Do you know, Mr. Doll, whether or not any CIO Union is the bargaining representative for employees in any dinner ware pottery in the United States?

Mr. Lamb: Objection. That is immaterial.

The Master: He may answer.

A. There are no CIO unions represented in any of the dinner ware potteries in the United States.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled. • • •

Q. (By Mr. Cooper) Do you recall, Mr. Doll, when the wage and hour law so-called went into effect?

A. In October, 1938.

Q. Prior to that how many hours a week had the pottery being operating normally?

A. We were basically on a 45-hour week.

Q. Was any change in the basic operation put into effect after October, 1938? • • •

A. When the law first went into effect in 1938 providing for a 44-hour work week there was—well, basically we had to, and did, adopt the 44-hour week, yet it made a very little change in our operation because previous to that time very few employees had been working the full 45 hours.

Q. (By Mr. Cooper) Was there subsequently any further reduction in the number of hours of normal operations?

A. In October, 1939, we reduced our basic work week to 42 hours, and in October, 1940, we reduced our basic work week to 40 hours.

Q. Did this have any effect on the number of employees in the pottery?

A. It did have an effect up until 1940 in making it necessary to put on additional employees.

Q. Did the increase in the number of employees necessitate the putting in of any extra equipment?

A. In certain departments it did.

Q. How much did that amount to, Mr. Doll?

A. You mean in dollars and cents?

Q. Could you state it relatively to indicate to the court whether it was something of a substantial nature or otherwise, any items of machinery that had to be added?

A. Most of our large items, large mechanical items, connected with production, had a certain amount of reserve capacity in them which we were able to utilize. It did involve in a way of minor incidental machines and incidental pieces of equipment around the plant some extra investment. • • •

Q. (By Mr. Cooper) Was the matter of reducing

hours a handicap to the company so far as costs of production are concerned?

Mr. Lamb: Objection.

The Master: I will take his answer.

A. The coming in of the 40-hour work week necessitated much closer control of employees' time to keep them within the statutory period than what it had previously been.

The Master: In that respect, then, it increased costs of production?

A. It did not throw us into increased cost of production, because during that period our business was on the increase anyhow. It had been growing each year, and any increases that might have come from the shortening of the work week were fairly well absorbed by the additional amount of business being done.

Q. (By Mr. Cooper) Are employees of the company paid according to the number of hours that they are at work or on the basis of how much production they turn out?

A. 98 per cent of our people are paid on the basis of a production turned out under the piecework system.

Q. Would it be a handicap or a matter of additional cost to the company if an employee who punched in between 7:01 and 7:15 were treated as having started work at 7 o'clock?

Mr. Lamb: Objection.

The Master: I will take his answer. I am not sure I fully understand the question.

A. No, it would not increase the company's cost. • • •

(A newspaper picture was thereupon marked Defendants' Exhibit 84.)

Q. (By Mr. Cooper) Mr. Doll, do you have a water tower on the premises of the Mt. Clemens Pottery Company?

A. We do.

Q. Does that tank have a sign painted on it?

A. It did.

Q. And how does the sign read?

A. How did the sign read?

Q. How does the sign read at the present time?

A. At the present time the sign reads: "Mt. Clemens Pottery Company."

Q. How did it formerly read?

A. Previous to June, or for a number of years previous to June, 1941, the tank read: "Mt. Clemens Pottery Company. Owned by S. S. Kresge Company."

Q. And who, if you know, ordered the painting on the sign to be changed?

A. I did.

Q. Did you have any orders or instructions or requests to do that?

A. It was done entirely on my own responsibility.

Q. Can you say, Mr. Doll, whether Exhibit 84 is a correct picture of the language on the sign as it read during the period involved in this action?

A. Exhibit No. 84 is exactly the way the sign read previous to June, 1941.

Mr. Lamb: Was there any writing on the opposite side of the sign?

A. There is none, never has been any.

Mr. Cooper: If the Court please, I offer Exhibit 84 in evidence, the picture. • • •

The Master: I think they can use newspaper pictures of the water tower if the witness can identify the water tower having the appearance shown in the picture. I don't think this part of the exhibit entitled "CIO News" or the statement underneath is admissible. I admit it simply to show the water tower, and nothing else. • • •

Q. (By Mr. Cooper) Have you ever had occasion, Mr. Doll, to make any study as to the amount of time lost during the day by a worker time lost from work?

• • •

A. Yes.

Q. (By Mr. Cooper) What was the occasion?

A. At various times in connection with the establishment of piece work rates. It has been such times as that.

Q. What sort of procedure would be used in making such a study?

A. The procedure would be based upon an actual study and observation in the various departments as to the daily habits and method of operation and conduct of the various employees. • • •

Q. On the basis of your own observation now, can you state what is the average amount of time not worked during working hours per day?

Mr. Lamb: Objection.

The Master: This is apart from any study that may have been made with a stop watch, you mean, just general observation?

Mr. Cooper: Yes, your Honor. • • •

The Master: I will overrule the objection with that understanding.

A. My observation and study of this matter indicates that the employees take out between 25 to 30 minutes in the course of an ordinary work day. • • •

Q. (By Mr. Cooper) Are there certain 24-hour operations at the pottery, Mr. Doll?

A. Yes. • • •

Q. (By Mr. Cooper) Could you say whether or not the pressmen in the slip house, the boiler firemen and the kiln firemen are engaged in 8-hour shifts?

A. They are.

Q. And how many shifts a day?

A. 3 shifts a day.

Q. How many days a week, sir?

A. The pressmen are 5 days a week, the boiler firemen are part of the year on 7 days a week and part of the year during the summer season on 5½ days. The kilns are on 7 days a week.

Q. When they are on the 7 days, how many hours does each employee work during the week?

A. There is a basic work week of 40 hours. • • •

Q. (By Mr. Cooper) Have you been out in the plant and observed what happens at the time of the changes of shift in these departments?

Mr. Lamb: What departments, these kilns?

The Master: Any of the three-shift departments, I understand.

Mr. Cooper: Any of the three.

A. Well, you take in any of these departments where one shift is taking over at the expiration of the working time of the other shift, the men on the shift just coming in enter the department, go through the usual procedure of changing their clothes, getting ready their personal belongings, sitting around and talking, frequently they will engaged in conversation with the shift that is still working, and the shift that is just about to complete its day's work, of course remains in charge of the operation until the expiration of their time, when the other shift takes hold and assumes the responsibility of the job.

Q. How many men work, make up a crew among the pressmen in the slip house?

A. The pressmen and the mill chargers, who work together, make up a crew of four on each shift.

Q. Now, from your own observation, Mr. Doll, can you say whether or not it would be possible for a crew coming in, say, at 7 o'clock, to be working at the same time as the crew whose operations were finished at 7 o'clock?

A. It is not possible for them to both—both crews to be working at the same time on any of these operations.

Q. Are you speaking now of the pressmen in the slip house only?

A. No, I am referring to the pressmen, the mill-chargers, the boiler firemen and the kiln operators. • • •

Q. (By Mr. Cooper) How many days a year does the pottery operate?

A. The pottery is in operation 365 days a year.

Q. And 24 hours a day?

A. In certain places.

Q. And how long has this been true?

A. This has been true ever since we have had tunnel kilns.

The Master: Are the operations on the kilns the only operations that continue all hours of the day and night throughout the year?

A. That is correct, with the exception of the operation of the boilers during the cold and cold weather seasons.

Q. How many years would that go back, Mr. Doll?

A. To 1920.

Q. And has the pottery been in steady operation from that time right up to the period involved in this law suit?

A. It has been steadily. • • •

June 23, 1942

CHARLES E. DOLL, SR., was thereupon recalled as a witness, being previously duly sworn, testified further as follows:

Mr. Lamb: I will call this witness for further cross examination.

Cross Examination (Continued)

By Mr. Lamb: • • •

Q. (By Mr. Lamb) Mr. Doll, when your son, Charles E. Doll, Jr., testified here last week, he was going to produce, or have you produce, the invoices covering the purchases of materials sold to the employees. Do you have that with you now?

Mr. Nunneley: No agreement was made to produce anything here.

The Master: I thought a search was going to be made.

Mr. Nunneley: The question was whether records were kept. • • •

The Master: Mr. Doll, you are familiar with the entire record keeping system of the Mt. Clemens Pottery Company?

A. I am.

The Master: Do you have any records, any summary records showing total sales of items of equipment that are sold to the employees?

A. We do not.

The Master: Would there be any way, any kind of records that you have from which such a statement could be prepared, except these computation sheets from which you prepared the record of deductions from the pay of Dorothy May?

A. Your Honor, the amount involved in this whole proposition of sales to the employees is such a small item that we do not keep separate records. The invoices are charged to factory operating expenses when they come in and we do not attempt to segregate the portion of these invoices that may finally result in sales to the employees and the parts that are used in ordinary factory operations, and consequently the only record that is available would be to go through a whole year of work sheets, take off from the entire year's work sheets the total amounts that had been charged as deductions to employees.

That would simply show the extent of the total deductions, the same as was done in the case of Dorothy May, on which an exhibit was introduced.

The Master: Well, as to your records of purchases of supplies, do your ledger sheets separate purchases into a definite category such as sponges—

A. (Interposing) No, sir, those things—all small items of that kind simply are charged into factory supplies.

The Master: And will you name the things that the factory supply account covers?

A. Well, our total factory supplies account consists of many items that do not enter into sales to employees, as well as the items that do enter into it.

For instance, all items of small tools bought for maintenance purposes go into factory supplies. Many types of brushes that are not sold to employees, for instance all the brushes that are used in the bisque ware room in brushing the ware, as has been heretofore described, go into factory expense.

The Master: Factory expense.

A. Factory supplies and expense; that is the general term of the account, and—

The Master: Let me ask you this, if you have a variety of types of equipment purchased, some of them machines, some of them tools, and brushes, and so forth, would the machines you buy come under the heading of factory supplies and expenses?

A. Oh, no.

The Master: The only things that come under that are the more or less small miscellaneous items of equipment?

A. Exactly, brooms for sweeping the floor, brushes, and there are a multitude of items that come up daily that have to be purchased for the operation of a plant of that kind, and even there the total aggregate in relation to the amount of business done by the company, after you bunch them all together, under the general heading of factory supplies, is a very small item of the total expense of the business.

The Master: You don't have any segregation of factory supplies of the different classes at all, is that the idea?

A. Not in classifications; they all come under the general heading of factory supplies, and they are charged to that account.

The Master: Have you any idea what percentage of the volume of factory supplies cover purchases to employees and what percentage would cover other items of equipment purchased by the plant that are not sold to the employees?

A. I would say that of the total value, cost value of the factory supply account, that an outside figure, which would be more than liberal, would be that not in excess of 10 per cent of the total—

The Master: Would be sold to employees?

A. Exactly.

The Master: Well, I guess the only way the deductions from employees could be determined, then, would be through these computation sheets. It might be pos-

sible to go through those sheets with three or four selected employees picked at random just to get some idea of the amount of deductions; that has been done with one employee.

Mr. Lamb: May I ask a question?

The Master: Yes.

Q. (By Mr. Lamb) Mr. Doll, how do you list the income which you receive from the sale of the supplies, materials which you sell to your employees—

Mr. Cooper: I object to the form of that question.

Q. —in your financial statement? • • •

A. As a matter of fact, there is no income derived from purchases for and sales of supplies to employees. That particular operation is definitely handled at a loss, despite the fact that some of the items there may be a small percentage of overhead added to the cost. The entire volume of these sales is absolutely trivial, and because of being so trivial there is no effort made to segregate it, keep a record of it or keep track of it in any form other than in the deductions shown from the employees' accounts.

Q. What I am trying to find out from you, Mr. Doll, is how do you list on your financial statement, which you say you are familiar with, that item representing the amount deducted from the employees' pay checks for these supplies, or the monies received from the employees for supplies sold them by the company? How do you list that item?

A. There is no separate listing made of it.

Q. If there isn't a separate listing, where do you list it with any other item?

A. The loss that results from the operation is reflected in the final balance sheet of the company, the same as any other miscellaneous items of expense would show up.

Q. You have said that on some items there is a slight— or a profit representing possibly a mark-up or overhead. Where do you list that item of profit or overhead charged?

Mr. Nunneley: He didn't say there was a profit on any item.

The Master: I don't think he said "profit."

Mr. Lamb: He didn't today, but he has before.

The Master: He said a mark-up.

Mr. Nunneley: He didn't say it any time.

The Master: Is there a profit on any items, any single items?

A. There is nothing added to any items that adequately covers the cost of handling them and the details connected with providing this convenience for the employees.

The Master: The witness denies that there is a profit made on any of the items. If you want to re-frame your question in terms of mark-up or overhead charge, all right.

Q. (By Mr. Lamb) All right, I will ask you that question, to advise us where you include in your financial statement that item that you refer to as a mark-up?

A. Is there a question?

The Master: Yes, read it back, reporter.

(Question read.)

A. As I previously stated, there is no specific item in our financial statement to cover a trivial thing of this character, but it is simply reflected in the final figures as to the profit or loss of the company's total operations.

* * *

Q. Can you advise me, Mr. Doll, whether you have any written contract or any written document signed by employees authorizing the deductions from the payrolls for these articles which are charged to their account?

A. We have no written agreement.

Q. You said the other day that the amount of the sale of articles other than sponges amounted to not more than $1,000 a year?

A. I said that would be a high figure.

Q. And now have you, or will you tell us what the total amount that has been charged to employees for sponges,—what that amounts to per year?

A. I couldn't give you an exact figure, but I think I would be very liberal in my estimate if I said that it did not exceed $2,000, $2,500.

Q. Well, now, as I understand it, the amount which you receive which you say is not more than $2,500 for sponges, and some not more than $1,000 for articles sold the employees other than sponges, I don't have clear in my mind where you list as a profit or loss the item represented by the sale of those articles to your employees. Some articles you say you have a mark-up on; some you may take a loss on. How and where do you list those profits or losses?

Mr. Cooper: If the Court please, I think this is either the third or fourth time this question has been asked.

The Master: I wonder if we can get at it this way: you stated on the expense side, when you purchased these supplies, the cost is entered in the item of factory supplies and expense?

A. That is correct.

The Master: Now, when you sell these items to the employees you derive a revenue therefrom, whether it represents a profit or loss, when you figure your revenue against your expenses, is that not true?

A. That is right.

The Master: Where do you list that revenue that you derive from the sale of the equipment?

A. As I previously stated, the same items are used in other portions of the plant for other purposes and, consequently, the detail of attempting to segregate the amount used by the company and the amounts that are supplied to the employees is so very trifling and the bookkeeping involved would be so intricate to attempt to go through a debit and credit system for the division of the items that no attempt is made to do that, and that they are simply left to be absorbed in the general expenses of the business.

The Master: I understand that statement, that you make no segregation, you group the expenses involved in the purchase of these supplies with the expense involved in the purchase of other supplies in the business. I think it is clear in my mind what you do so far as entering the cost of these items is concerned. But, then, when you

turn around and sell the items of equipment to the employees you must list the revenue derived therefrom under some heading even if it is grouped in with our revenues. Now, just what heading is that?

A. It is just—it would just finally get into your profit and loss account.

The Master: Well, in your profit and loss account you have two columns, do you not, expenses and revenue, or debits and credits, or whatever you call them?

A. Debits and credits.

The Master: Debits and credits. You have told us in what category you list the expenses. I understand in this profit and loss statement you have one item consisting of factory supplies and expense, is that right?

A. That is correct.

The Master: Now, all of the items of equipment that *you purchase*, the amounts paid therefor go into that item along with items that are purchased and not re-sold to employees, is that right?

A. Yes, sir.

The Master: Well now, when you sell this equipment to the employees you derive some revenue therefrom. Where is that revenue, where does it show up in your profit and loss statement? Can't you name the item in which it appears?

A. It is deducted—the items are deducted from the employees' settlement, but there is no separate entry made of it.

The Master: In other words, it is a deduction from wages paid to the employees, consequently doesn't show up as an item of revenue?

A. That is correct.

The Master: In other words, on your profit and loss statement you just list the net wages paid to employees and do not list gross wages and a statement of deductions therefrom?

A. That is correct.

The Master: Well, I think that clears it up in my own mind. I don't know whether it does in yours, Mr. Lamb. You may ask further questions if it is not clear.

Q. (By Mr. Lamb) Do I understand that, for instance, if on Exhibits 45 and 46 you deduct more from the wages of employees or charge the employees more than those articles represented by Exhibits 45 and 46 cost the Mt. Clemens Pottery Company, in that event you enter that as a profit item in your profit and loss statement, but if there should be a loss on the sale of any article or overcharge, then and in that event you would list that as a loss item in your books of account, is that correct?

A. The average operation of the making of these sales, it finally gets into the profit and loss statement.

The Master: They don't figure a profit and loss directly on these sales and then enter that in the profit and loss statement. As I understand it on the expense side of the ledger the expense of purchase of these items is entered, and then on the revenue side of the ledger there is no item directly showing the amount realized on the sale to the employees because the sale to the employees is not a sale that brings in cash, but is taken care of by a deduction from the employees' wages and the net wages would simply be entered, so it is indirectly taken care of?

Mr. Cooper: May I make a suggestion at this point, if the Court please?

The Master: Yes.

Mr. Cooper: The language has been used here as showing a deduction from wages. I wonder if the Court has in mind whether it is a deduction of wages or deduction from a payroll account?

The Master: I don't want to get into an argument over terminology; it is a deduction from the amount paid to employees; whether it is a deduction from wages or payroll account.

Mr. Cooper: I wanted to clear that up.

The Master: We were just trying to locate where that

item would appear in the balance sheet in the profit and loss statement.

Q. (By Mr. Lamb) This would be safe to say, wouldn't it, Mr. Doll, that your company has not listed in its income tax report the profits received from the sale of articles to your employees?

Mr. Nunneley: We object to that. It is immaterial what is in the company's income tax report. I don't know why we should go into that.

The Master: I will take the answer, but, again, I am going to give him an opporunity to answer in his own way.

A. It is impossible to have any item of gain or loss in a business that is not finally reflected in your profit and loss account from which your income or lack of income is derived.

The Master: Mr. Doll, are any of these items that are sold to the employees ever sold for cash.

A. No.

The Master: Where an employee would come in and pay 10 or 15 cents sometimes for his item of equipment?

A. I don't think that ever happens. I think you could liken this proposition to the amount of expense we put into making, over the course of the year, literally thousands of dozens of pieces of ware that some employee finally drops on the floor and breaks into many pieces. We do not keep an itemized cost of the loss involved in all those pieces of ware dropped by employees on the floor, but they finally—the loss resulting from them finally shows up in your profit and loss account there as a destruction of both material and labor.

Mr. Lamb: I would like to have the witness produce the invoices representing the purchases of materials sold to employees of the Mt. Clemens Pottery Company.

The Master: Do you have the invoices covering the purchases of the supplies, factory supplies and expense for this period?

A. We haven't any particular period we know what

items, some of which are sold to employees, the same as I previously submitted some invoices when I was on the stand last February. I showed some invoices then. How much of those total invoices were sold to employees and how much were used for just ordinary purposes around the plant, I am not in a position to say. We have no record of it.

The Master: Do you have the invoices of that type that you produced covering this period, even though they cover a broader purchase of supplies than supplies sold to the employees?

A. I can produce individual invoices of items sold, as I did before, the same as at that time I was asked to produce invoices covering certain items which were identified as gloves. I was asked to produce those and did produce them. If there are any similar items specified, I can produce invoices along similar lines to identify them with payroll deductions.

Mr. Lamb: My knowledge up to this point of the articles sold to the employees includes gloves, pails, scrapers or scrappers, sponges.

The Master: Scissors.

A. I think these invoices, to be of any value, should be identified with specific payroll deductions, the same as was done before.

The Master: Would you have all of the invoices in this particular account of plant supplies or factory supplies and expense? Would you have those in a separate file?

A. They are in the regular voucher file of the company. Many of them, in fact the big majority of them have no relation whatever to the matter of anything sold to employees.

Mr. Lamb: I think we are entitled to the invoices for the materials which they sold to the employees. Obviously we are not particularly interested in this question as to invoices for other materials. • • •

The Master: Suppose you pick out, or have somebody

in the plant go through this invoice file and pick out some invoices covering each of these five classes for illustration, at least, and bring them down and show them to Mr. Lamb and see whether or not that will answer the purpose.

A. I can do that. • • •

Q. When you said, Mr. Doll, yesterday, that you had observed some employees take off as much as 20 or 25 minutes a day from actual productive work, did you mean to refer to any particular employee on any particular day that you have knowledge of having taken off, as much as 20 or 25 minutes from actual physical productive work?

A. I was speaking of the average condition throughout the plant.

Q. So that you didn't mean to refer to any particular employee in any particular department on any particular day?

A. I did not. • • •

Q. You were referring to your labor practices in reference to practices in other pottery companies. Can you advise us of any other pottery companies that have had as many strikes as you have had in the last—since October 24, 1938?

A. No, I do not know of any others. • • •

Examination

By Mr. Cooper:

Q. Mr. Doll, what is the reason for paying an employee with checks or drafts that must be cashed at The First National Bank of Mt. Clemens?

A. The reason is due to conditions that developed quite a number of years back and first came into practice at a time when we had several bank failures in Mt. Clemens, and after these banks closed up or for a period of perhaps a couple months afterwards, various payroll checks came filtering back through, and we, of course,

made the checks good, but it resulted in a double loss, that is, a loss of the funds already in the bank, or the partial loss of those funds that had been provided for the payrolls, and the amount we paid out in making good on the checks.

The second thing was that in keeping the office records as to the return of the checks given to employees, these checks would not come back frequently for several months, due to the fact that the check may be given to a garage owner or a gas station operator in payment of a gasoline bill, he would stick the check in his pocket, maybe carry it around for quite a while and eventually turn it over to his supplier or to the County Treasurer in payment of taxes. But, anyhow, the checks would be moving around Macomb County or other sections of the State of Michigan for quite some long period before they would finally get back to us. It necessitated the records being kept open. Besides that, the checks would come back in a very dilapidated condition, and in order to safeguard against the bank condition as well as insure the earlier return of the checks and the return of them in better condition, this policy was adopted. It has been in effect for many years and has never been objected to by employees. • • •

Q. (By Mr. Cooper) Do I understand, then, Mr. Doll, it was sometimes a matter of several weeks after a check had been given to an employee before it was presented at the bank for cashing?

A. You mean previous to the time we adopted the present system?

Q. Previous to the time you adopted the present system.

A. It would sometimes be several months before we would get it back.

Q. And were there instances wherein in the meantime the bank had closed?

A. Yes. We lost considerable sums through bank failure in making good these payroll checks. • • •

Q. (By Mr. Cooper) This morning, Mr. Doll, you were explaining to the court the accounting system of the Mt. Clemens Pottery Company in so far as it applied to this matter of reflecting on your books the sale of certain supplies to employees. I am not sure that the record shows clearly the question or, rather, your answer to the question which was asked as to whether or not after such an item of the supplies is sold it is reflected as a deduction from a certain account. Could you explain that a little more fully?

A. It shows on the work sheets as a payroll deduction.

Q. Is there an account on your books known as a payroll account?

A. There is.

Q. And any deduction for bookkeeping purposes incurred in connection with the sale of supplies to employees would be a deduction from the payroll account, is that correct?

A. That is correct.

Q. Do you also have in your records an item or account known as gross wages?

A. That is a record that is shown on the earning cards.

Q. And with reference to these supply items, how are the gross wages computed?

A. The gross wages are the amount of the payroll that is credited to each worker after deduction has been made for any supplies purchased.

The Master: What are net wages, then, if you have such an item?

A. You might—our net wages would represent the amount of money the employee drew after from the gross wages you had taken off Social Security and insurance.

Mr. Lamb: Any supplies that are sold to the employees?

The Master: He states the supplies were taken out before the gross wages were computed.

Q. (By Mr. Cooper) Now, a number of questions have been asked, Mr. Doll, with reference to payments made to employees for imperfect pieces. Could you summarize the practice of the company as to what pieces which, although they have been made, are not paid for so far as the employee is concerned because of some imperfection or breakage, or something of that sort?

A. The employees are paid for the ware, or credited on to their payroll accounts for the ware when it is accepted in the clay state; that is, after it is ready to go into the kilns for the first burning. They are paid in full for the ware at that time, and, consequently, whatever happens to the pieces after that up to the time of shipment is—in the way of loss or imperfections—is borne entirely by the company.

Q. You were asked this morning, Mr. Doll, whether there was any written agreement with employees covering the sale of supplies to them, and I believe you answered that there was no written agreement. Is there any record written up at the time of the sale of an item of supplies to an employee?

A. The employee signs a receipt for the article charged to him.

The Master: Is that always done, or is that an occasional practice?

A. That is the rule. There might be an occasional instance where an employee, as a matter of convenience, might ask the foreman to get the article for him.

Mr. Lamb: I don't want to interject my own question at this point, but I wonder if the Master would ask what the practice was when finishers received sponges, for instance, who signed for them.

The Master: All right, I will ask that.

A. When sponges were being charged to the jigger men, the finishers signed the jigger men's name.

The Master: I guess that question has been covered in considerable detail in the past in the record. • • •

Q. (By Mr. Cooper) I think you have testified, Mr. Doll, that prior to the filing of this action there had been no

strike at the Mt. Clemens Pottery Company since 1923, is that right?

A. That is correct.

Q. There was no strike, then, from 1923 until what?

A. Until April 14, 1941.

Q. And what happened at that time?

A. At that time a strike was pulled at our plant by the Local 1083-CIO.

Mr. Lamb: Is that what has been referred to as the first strike, April 14, 1941?

A. That is correct.

Q. Did you have another strike during the year 1941?

A. There was another strike on November 24, 1941.

Q. How many strikes were there at the Mt. Clemens Pottery Company during the year 1941?

A. There were two strikes.

Q. Do you know of any other pottery company which had that many strikes during the year 1941?

A. I do not.

Q. Do you know of any other potteries where the CIO called a strike during the year of 1941?

A. I do not know of any such instances. • • •

Q. (By Mr. Cooper) Do you know, Mr. Doll, of any other pottery plant in the United States in which the CIO was carrying on an organizational campaign in the spring of 1941?

Mr. Lamb: Just let the record show an objection. I don't care to be heard on it.

The Master: All right, I will take the answer subject to the objection as to materiality.

A. To my knowledge there were no other organizational campaigns being carried on among potteries in 1941 by the CIO.

The Master: Of course, this is true, that most of those other potteries were organized by the AFL already?

A. That is true. • • •

Q. (By Mr. Cooper) Was Local 1083 of the United Pottery Workers of America, affiliated with the CIO, at

tempting to organize the employees of the Mt. Clemens Pottery Company on April 14, 1941?

Mr. Lamb. There is an objection.

The Master: Same ruling; you may answer.

A. They were carrying on an organizational campaign among the employees in 1941.

Q. (By Mr. Cooper) Can you state, Mr. Doll, whether or not, either at the time of the first strike in April, 1941, or at the time of the second strike in November, 1941, or in conjunction with either strike a demand or request was made by any worker or group of workers based on the company's regular method of computing hours worked?

Mr. Lamb: There is an objection. In fact, there are several grounds for the objection, but I assume it only goes to Mr. Doll's personal knowledge of objections that may have been made to him.

The Master: Yes. Any objection they may have made to him or that he knows of of his own personal knowledge. Obviously he can't testify as to what is beyond his personal knowledge.

Mr. Cooper: That is right.

The Master: And while I think this has already been asked, I will permit it to be asked again. Will you answer?

A. No such demands were ever made either upon me or upon the company.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Cooper) Was the plant of the Mt. Clemens Pottery Company closed down at the time of this second strike in November, 1941?

A. When the—

Mr. Lamb: (Interposing) Objection.

The Master: You may answer.

A. When the strike of November 24, 1941, was called, it involved only a small minority of the employees, and the plant remained in steady production.

The Master: That goes beyond the question. Just

answer the question as to whether the plant was closed down at any time.

A. The plant was kept in operation.

The Master: I will strike the other answer.

Mr. Nunneley: I don't know why the other answer should be stricken.

The Master: I am adhering to the rule here that the answer should be responsive because otherwise, after the question of the propriety of the questions has been argued out, if the witness were not restricted, we might get into a lot of matters that have been eliminated either by agreement or by ruling.

Mr. Cooper: In view of the Court's ruling, I want to address another question to the witness.

Q. What proportion of the company's employees went out on strike in November, 1941?

Mr. Lamb: Objection.

The Master: That is not very far from the other question; you may answer.

A. You say I may answer?

The Master: Yes.

A. About 15 per cent.

Mr. Lamb: I ask that the answer be stricken. . . .

SUMMARIZE FROM LINE 14, PAGE 3059, THROUGH LINE 17, PAGE 3070, AS FOLLOWS:

"Exhibits 84, 5A-MM, 2 A-C, 6 A-C, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 36, 37, 38, 39 A-AA, 40, 41, 42, 80 A-C, 85 A-B, 86 A-C, 87 A-C, 88 A-C, 89, 89-A, 90 were received in evidence. The witness marked on Exhibit 90 the location of the Pottery (by the letter 'P') and the downtown section of Mt. Clemens (by the letter 'X')."

WILLARD C. STIEF, was thereupon called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Stief?
A. I live in Mt. Clemens.
Q. Your street address is what?
A. 158 South Wilson Boulevard.
Q. Do you work for the Mt. Clemens Pottery Company?
A. Yes, sir.
Q. When did you start working for the pottery company?
A. 1922.
Q. And what was your job when you were hired in 1922?
A. I was hired as a ceramic engineer.
Q. And what was the nature of your work during the period from October, 1938, until April, 1941?
A. Well, my duties varied considerably. I supervised the making of the glaze that was applied to the dinner ware, and the firing of all the kilns of the plant and supervising the quality of the ware passing through the plant and I was foreman on a section of the glost belt.
The Master: You mean you did all of these things at the same time, or you did them successively?
A. During the course of the day.
Q. (By Mr. Cooper) And did you spend a portion of your time every day supervising the operation of some part of the glost belt?
A. That is correct, a portion of my time every day was spent on that.

Q. Did you confine yourself pretty much to some particular geographical part of the belt, or would you be pretty much up and down and around the department during the course of a day?

A. Well, I personally had charge of the men who unloaded the saggers from the cars and the boys who took the ware out of the saggers, which constituted about 25 employees.

Q. And whether or not during the day you would have occasion to see not only these particular employees, but other employees in the glost belt department?

A. I would have occasion to supervise the workmanship of the other employees, too.

Q. Was there any normal or regular starting time for the glost belt department?

A. Yes, we set 7 o'clock the normal production starting time.

Q. Would you usually be at the plant by that time?

A. Yes, I generally arrived at the plant by about ten minutes of 7 in the morning.

Q. And on the basis of your observation, what time did production work on the glost belt system begin?

Mr. Lamb: Objection.

The Master: Overruled.

A. It began at 7 o'clock.

Q. (By Mr. Cooper) Did production work on the belt ever begin before 7 A. M.?

A. No, definite production work didn't start before 7.

Mr. Lamb: Objection.

The Master: Overruled.

Q. Was there anything which was done before 7?

A. Well, on Monday mornings we would have some of the men come in to get the saggers in position so that the other people, the majority of the other people on the belt could start to work.

Q. Was this Monday morning practice followed throughout the period from October, 1938, to April, 1941?

A. It was.

Q. Do you recall whether there was any change in the standards under the wage-hour law in the year 1940?

A. Why, in October, 1940, we established a 40-hour working week.

Q. Did that make any difference in the operations of the glost belt?

A. Well, we arranged our production to be finished at 40 hours.

Q. Starting at that time, were certain employees required to come in earlier on Monday mornings?

A. On Monday mornings, the men who unloaded the saggers and the men who took the ware out of the saggers, they came in 15 minutes to 7.

Q. Did that include all the men in the glost belt department?

A. No, that is just a small portion.

Q. And that was true subsequent to October, 1940?

A. Before October, 1940? What was the question?

• • •

Q. By subsequent to October, 1940, Mr. Stief, I mean after October, 1940?

A. Yes, after October, 1940, that was our practice.

Q. Was that also the practice before October, 1940?

A. No, it wasn't the practice before.

Q. Have you ever observed employees in the glost belt department arrive in that department earlier than 7 in the morning, and I am leaving this Monday question out of consideration now. Aside from this practice that you have described under which certain employees came in 15 minutes early on Monday mornings, aside from that what is your observation as to what employees did when they arrived in their department earlier than 7 o'clock?

A. Well, the older employees would generally go to their stations that they would work at, and sit down until 7 o'clock and rest, or a group of them close by would get together and talk before 7 o'clock. The younger fellows would generally go where there was a group of girls, and talk to the girls before 7 o'clock.

The Master: What time would they start coming in in the morning?

A. Well, they would start coming in any time after 15 minutes to 7.

The Master: What time would they start arriving in the department? Do you mean any time after fifteen minutes to 7:00?

A. Yes. After they have a chance to walk to the department.

Q. (By Mr. Cooper) And what was the normal working day in the glost belt department during this period from 1938 to 1941?

Mr. Lamb: Objection.

The Master: He may answer.

A. The normal working day was from 7¾ to 8 hours.

Q. What would that variation depend on, Mr. Stief?

A. Depend upon the amount of production we were putting through that particular department.

Q. Would you keep the glost belt running until such time as you had finished up with all the production work that there was, or was there any particular practice with reference to turning off the switch and stopping production at night?

A. We would turn off the switch at the closest quarter of an hour, of 7¾ to 8 hours.

Q. Was it always on an even quarter-hour?

A. Always on an even quarter-hour.

Q. That the switch would be turned off?

A. Yes.

The Master: Who turned off the switch?

A. The foreman of the department.

The Master: Is that you or someone else?

A. It was the other foreman.

Q. (By Mr. Cooper) Would everyone working on the belt stop working at the same time at the end of the day?

A. No, there was a few fellows that were sweepers and cleanup men would stay around longer.

Q. And, if you know, what arrangement if any was made as to their compensation?

A. They were paid on an hourly basis.

Q. Do you know whether or not they were paid on an hourly basis for their work in cleaning up around the belt after production was stopped?

A. That is what they were paid on.

Q. Aside from these cleanup men, would everybody else be through work at the same time?

A. They would be through work at the same time.

Q. And when would that be?

A. That would be on the even quarter of an hour.

Q. Now, did some employees in this glost belt department follow a practice of punching out the time clock at the end of the day and then come back in and do some more work?

A. No, they didn't do that.

Q. Mr. Stief, did you ever give instructions to any employee as to when he should punch in the time clock in the morning?

A. No, excepting that our starting time was 7 o'clock, to be there before 7 o'clock.

Q. Was there any limit as to how much before 7:00 they could punch in the time clock?

A. No, there was no limit, excepting that not before the quarter of an hour previous to 7:00.

Q. Is it your testimony, then, that they could punch in the time clock at any time between 14 minutes to 7:00—

A. (Interrupting) That is right.

Q. (Continuing) —and 7:00?

A. That is right.

Q. Do you know whether or not an employee who started work at 7 o'clock would be premitted to punch in, say, at 16 minutes to 7:00?

A. No. Well, we would ask them not to. • • •

Q. Suppose that somebody punched in the time clock at 16 minutes to 7:00 in the morning, Mr. Stief, and then punched out the time clock at 15 minutes to 12:00 at noon, and the company was going to figure up how many hours that employee had worked that morning. Now, are you familiar with the practice that would be followed in

figuring up that employee's time? If he punched in the time clock at 16 minutes to 7:00 would his hours of work start at a quarter to 7:00 or at 7:00?

A. Quarter to 7:00.

Q. Did you attend foremen's meetings, Mr. Stief?

A. Yes, sir.

Q. How frequently were they held?

A. We held them once a week.

Q. Was Mr. Charles E. Doll, Sr., present at those meetings?

A. Yes, he was generally present.

Q. Did he ever discuss the matter of the wage and hour law at those meetings?

A. Yes. We discussed that law very thoroughly.

Q. And, in a general way, what would Mr. Doll have to say about the wage and hour law?

A. Well, he cautioned us to abide by the length of work week, and our plant's production was adjusted to the length of week in a general way that the law provided for.

Mr. Lamb: Objection. That is a conclusion.

The Master: That is a pretty broad conclusion. You asked him as to what Mr. Doll said at the meetings. Will you restrict yourself to what Mr. Doll said, rather than what you did, and I will strike that latter part of the answer.

A. Well, we adjusted our--for instance, after October, 1940, when we had a 40-hour week—

The Master (Interposing): Just a minute. You are talking now about what you did. What did Mr. Doll say at these meetings with reference to the wage and hour act? • • •

A. Well, he discussed the Act and how it affected our working conditions in the plant, of the length of week, and we would adjust our production to the length of work-week in effect that the law had in effect at that particular time.

Q. Do you recall what the number of hours of straight time worked per week was permitted after October, 1940?

A. It was a 40-hour week.

Q. Was anything said by Mr. Doll at the foremen's meetings as to the number of hours that employees in the glost belt department would be permitted to work in any one week?

Mr. Lamb: I object to it on the ground it is leading.

The Master: Well, he has asked the general question before. I will let him call attention to any particular angles which Mr. Doll might have said. • • •

A. We would adopt the 40-hour week, and that was a statement that he would explain to us to try to finish our—the production through the department in a 40-hour week.

The Master: I think that statement is fair; I will let it stand. I myself thought this other statement was not going to be proper testimony, but I wanted to wait until I got the full statement before ruling on it.

Q. (By Mr. Cooper) Do you recall an employee or former employee by the name of Nick Dacko?

A. Yes.

Q. Do you happen to recall what his job was when he was first hired by the Mt. Clemens Pottery Company?

A. He ground bats and was used as a utility man wherever he was needed.

Q. About how long, roughly, was he on the job being a bat-grinder, if you remember?

A. I wouldn't remember.

Q. Do you think it would be a matter of more or less than a month?

A. I would say from 3 to 5 months.

Q. During this period when Dacko's job was that of a bat-grinder, did you have any occasion to observe whether or not he spent practically all of his time grinding bats?

A. No, he didn't spend all of his time grinding bats, he did other work besides grinding bats.

Q. Did you ever have occasion to give Dacko any instructions as to what procedure he should follow when he came into the plant in the morning?

A. Yes, when he came into the plant in the morning his instructions were to hesitate at the position of the

glost belt at 7 o'clock to get his orders whether he should work at that position or whether he should go back and grind bats?

The Master: Who was he to get those orders from?

A. Get them from me.

The Master: When did you give these instructions to him?

A. At 7 o'clock.

The Master: Well—

A. (Interposing) Or a few minutes after seven.

The Master: Were these instructions repeated on a number of occasions, I mean when did you begin the instructions, not as to whether he was to grind bats or work on the glost belt, but when did you give these general instructions about his coming and hesitating?

A. That was at the very beginning of his employment.

Q. (By Mr. Cooper) Do you recall whether or not during this period that Dacko was employed as a bat grinder he did ordinarily stop in the glost belt department at 7 o'clock in the morning and ask for instructions as to what job he should start on that day?

A. Sometimes he would and sometimes he would go back to the department where he ground bats and started immediately on grinding bats.

Q. Could you give the Court any idea as to how frequently during this period Dacko would be called away from the bat-grinding job and put on some other job?

A. Well, he would be called three or four—three times a day at least.

Mr. Cooper: That concludes the direct examination.

Cross Examination

By Mr. Lamb:

Q. When Mr. Dacko was in your employ, the employ of the Mt. Clemens Pottery Company, you say that he hired to do bat-grinding and general utility work?

A. Of that department.

Q. I see. Well, now, is bat-grinding a piecework job?

A. No.

Q. The people that work on bat-grinding are paid on an hourly rate rather than piecework?

A. Hourly rate.

Q. And the work of a general utility man would also be on an hourly rate rather than the piecework rate, is that correct?

A. Yes, sir.

The Master: Answer out loud, please.

A. Yes, sir.

Q. (By Mr. Lamb) You didn't tell us how many employees were in the glost belt department.

A. The whole department?

Q. Yes.

A. Approximately 100.

Q. Did you advise us, or will you advise us, whether on this glost belt there is any kind of a clock which records the time the glost belt started operation?

A. You mean an automatic device to determine—

Q. Yes.

A. No, there is no automatic checking device for the time.

Q. So when you say that on certain occasions the belt started at 7 o'clock, you had a chance to see it start and that is how you recollect now, that it did start at 7 o'clock on these days?

A. That is right.

Q. Then you were telling us about Mr. Doll's speeches to your foremen's meetings, and that he advised you about the Wage and Hour law, is that correct?

A. That is right.

Q. And that your employees were covered by the Wage and Hour law, is that correct?

A. That is right.

Q. Did he say that all of the employees of the Mt. Clemens Pottery Company were covered by the Wage and Hour law and that you men should be governed accordingly? • • •

A. All the employees.

Q. (By Mr. Lamb) How many foremen would attend the meetings on Tuesday that you have referred to as being addressed by Mr. Doll?

A. Approximately all the foremen.

Q. Would you give us some notion?

A. Well, I think there was 28 to 30.

Q. 28 or 30?

A. Yes.

The Master: Did you punch a time clock, Mr. Stief?

A. No.

The Master: I take it none of the foremen did?

A. No.

The Master: You said you got to the department about 10 minutes to 7:00. Was that a regular time that you got there every morning or were you just averaging it about the time you got there?

A. That is the average.

The Master: You sometimes got there a quarter to 7:00?

A. Sometimes at 6:30.

The Master: Sometimes at five minutes to 7:00?

A. Yes.

Q. (By Mr. Lamb) But you have certain functions to perform in getting the machinery ready or getting work in shape so that the employees could proceed immediately with their work?

A. Not in the part of the department that I supervised.

Q. What did you do when you arrived, for instance, a half-hour before 7:00? What did you do in that interim to prepare for the day's work?

A. Generally I would be called to supervise some of my other duties other than the glost belt.

Q. But occasionally on the glost belt, too?

A. Not at that time.

Q. I can't understand you. You say not at that time?

A. Not at 6:30 in the morning.

Q. I see. Well, any time between 6:30 and 7:00?

A. No.

The Master: You didn't have anything to do before 7:00?

A. No.

The Master: In the glost belt department?

A. No.

The Master: Or, that is, on the glost belt?

A. That is right.

Q. (By Mr. Lamb) Then when it came 7 o'clock, what did you have to do on the glost belt?

A. Well, the first duties at that time was to look over the department to see that every position was properly manned, that the personnel was present.

Q. Did you have the function of instructing any of the employees in your section of that department as to the time when they should appear the next morning for work?

A. No.

Q. Now, did you advise employees to be there 14 minutes of 7:00 rather than 15 minutes of 7:00?

A. No.

The Master: Answer out loud, please.

A. No.

Q. (By Mr. Lamb) You know, as a matter of fact, don't you, Mr. Stief, that employees in that department or employees in other departments did not report at 15 minutes of the hour, but at 14 minutes of, and from 14 minutes on to the hour, don't you?

A. State that question again.

Q. Do you know that the employees reported at 14 minutes to and from there on up to 7 o'clock, for instance, but never at 15 minutes to 7, don't you?

A. That is right.

Q. And certainly never at 16 minutes of?

A. That is right; yes, sir.

Q. Well, as a matter of fact, if an employee arrived, for instance, at 10 minutes of 7 you were charged, were you not, with advising him that he was late?

A. No.

Q. You say you had just about 25 employees in your section of the department, is that correct?

A. That is right.

Q. Were those mostly girls or men?

A. They were all boys and men.

Q. Do you have any other persons who work in that particular section of the department other than those on the saggers or on the glost belt itself?

A. No, not in that department.

Q. Don't you have an operator who arrived earlier, more or less to see that the machinery was in proper working order?

A. No, sir.

Q. Did you have a man in that section of the department who would take the water off of the glaze or perform any of those functions?

A. No, sir. * * *

Q. (By Mr. Lamb) Now, you said that on Monday mornings men would come in to get saggers put into position; that is, they would come in some time before 7, is that correct?

A. That is right.

Q. Could you give us the names of some of the men, or was that true of all the men?

A. They came in at 15 minutes to 7, the men who unloaded the saggers from the cars, and took the ware out of the saggers.

Q. Now, would you give us the names of some of those men?

A. Martin Kukuk.

The Master: Would you spell that?

A. K-u-k-u-k.

Q. Yes.

A. Elmer Glefke, Norman Almstatt.

Q. Any others?

A. I just can't recall them.

Q. May I give you a list of employees represented in this action, and ask you if you will quickly glance through

that and give us the names of some persons who (handing document to the witness)?

Mr. Nunneley: Names of what? What is the question?

The Master: The question is the names of the persons who came in Monday morning in this glost belt department.

Mr. Lamb: That is right.

The Master: Go down this list from the beginning, and if you see any of the employees who came in early on Monday morning to do that job, why, just name them as you find them. Can you read the writing?

A. Yes, I went over that. Nick Dacko, George Liebzeit, Harry Lozan, Floyd Pearl.

The Master: That is all?

A. That is all.

Q. (By Mr. Lamb) Now, as I understand it, to clarify this picture of this Monday morning work, what you have testified to relative to their coming in early on that day to unload the saggers, that only applied to Monday and that the situation on that day, therefore, is different than on other days, isn't that correct?

A. That is right.

Mr. Nunneley: He testified it only applied to Mondays after a certain day, too.

Q. (By Mr. Lamb) Yes, and will you tell us what date that applied to?

A. October, 1940.

The Master: What was done before that?

A. Well, we weren't so insistent that the people would come in and they wouldn't have work immediately when they would come in, but this method of operating, when the rest of the department would come in, there would be work available at 10 o'clock for them to start working.

The Master: In other words, before October, 1940, you mean that everybody in the department would come in at 7 and then this job would have to be done before the others could do any work?

A. That is right.

Q. (By Mr. Lamb) How was that change brought about, was that the result of an order from the head office, Mr. Doll, or some general direction; just tell us how that occurred, will you?

A. That was a matter of the foremen's operation in the department.

The Master: Well, who made the decision to make that change?

A. The rest of the foremen on the belt cooperate their problems and decide to operate to the best advantage.

The Master: You mean that all the foremen in the department got together and decided that it would be a good thing?

A. That is right. • • •

June 24, 1942

HARRY A. REIFIN, was thereupon called as a witness on behalf of the Plaintiffs, and having been first duly sworn, testified as follows:

• • •

Direct Examination

By Mr. Lamb:

Q. Will you give us your business address, Mr. Reifin?

A. Wage and Hour Division, David Stott Building, Detroit.

Q. What is your capacity with the Wage and Hour Division?

A. Supervising inspector in Michigan.

Q. You have charge of the office of the Wage and Hour Division of the United States Department of Labor for the State of Michigan area, is that correct?

A. That is right.

Q. How long have you been with the Wage and Hour Division, Mr. Reifin?

A. Since August 3, 1939.

Q. The area under your supervision includes the City of Mount Clemens, Michigan?

A. Yes, it does.

Q. You are familiar with the Mt. Clemens Pottery Company, are you not?

A. Yes, sir. Well, I am not so sure how far that goes. I am familiar with the Mt. Clemens Pottery Company so far as the name is concerned, and the operations from the standpoint of our inspection. Other than that, I don't know very much about the company.

Q. Mr. Reifin, do you appear here in response to a subpoena?

A. Yes, sir.

Q. In your capacity with the Wage and Hour Division, have you visited the premises of the Mt. Clemens Pottery Company?

A. I did in 1939; in November of 1939.

Q. And you interviewed employees and members of management, did you?

A. Yes, I did. • • •

Q. (By Mr. Lamb) Did you make a request to the employer of the Mt. Clemens Pottery Company to have interviews with the employees?

A. I did.

Q. And did you hold such interviews?

A. I requested permission to hold interviews privately on the premises which was denied, and Mr. Doll, Senior, told me that I could, however, talk to anyone that I wished on the premises, provided I went with his son.

Q. Charles E. Doll, Junior?

A. That is right.

Q. And was that done?

A. That was done.

Q. And the interviews you held were in the presence of Mr. Charles E. Doll, Junior, is that correct?

A. That is right, except I don't want to give a wrong impression here. Mr. Doll, Junior, stayed aside about 10 or 15 feet away while the interview was being conducted. He wasn't exactly present, and didn't hear the questions or the answers that were asked.

Q. But the employee could see that Mr. Charles E. Doll, Junior, was present?

Mr. Nunneley: We object to that.

A. That is right.

The Master: I will overrule it. It is leading, but I don't think any harm is done.

Q. (By Mr. Lamb) Did you stay on the premises or visit the premises and interview employees on various days in that year 1939?

A. If I recall correctly, I believe the interviews that I made on the premises, those that I made on the premises were made in one day; I don't think I contacted any employees other than that one day.

Q. I see.

The Master: About how many did you interview, according to your recollection?

A. I would say about 10 to 15.

The Master: Were those scattered around in different parts of the plant?

A. Yes, sir.

The Master: Did you spend the whole day, according to your recollection, doing interviewing, or was it just a few minutes?

A. No, it was, I would say, a good two hours; it wasn't the whole day.

The Master: About how long would you spend with any one employee?

A. Not more than 10 minutes. I couldn't very well, because there were certain questions I didn't want to ask employees in the presence of the employer.

Mr. Nunneley: We move that be stricken out. He didn't ask any questions, it is obvious he already stated the employer couldn't hear; I move that that be stricken out.

The Master: He is stating his own reason, at least, why he didn't; I will leave it in as his own reason.

Q. (By Mr. Lamb) You visited the plant on other occasions, did you?

A. Yes, I was there four days.

Q. In 1939?

A. That is right. Pardon me, did you say "October"?

* * *

Q. (By Mr. Lamb) Did you make inquiry from the employees relative to their going directly to work after punching the time clock and proceeding to productive work immediately after punching the time clock?

Mr. Nunneley: We object to that. * * *

The Master: I can think of some cases in which your argument might have force, but I don't see how that has force here where there is a dispute over the company's method of keeping its records and paying its employees, or keeping time records of its employees and computing overtime, and all the company's records pertaining to that issue have been necessarily exposed by the lawsuit and are subject to—well, they have been scrutinized by the Master and by the opposite party as well as the defendants and have become public records so that any further disclosure along that line that the witness might make, would not be like the witness going out and telling some competitor or somebody who might be interested in injuring your organization, information that he had gained as a Governmental employee in inspecting the books and records, and making any other inspection when the defendant was under compulsion to submit to the inspection.

Well, I would like to find out as a preliminary matter, as to whether you have any authorization from your su-

periors or whether it is the position of the agency that you yourself can divulge information which you might be able to resist on a subpoena if you wished to do so.

A. I was waiting for an opportunity to make a statement, and I would like to say that ordinarily the Division does not permit members of the staff to testify because of some of the reasons mentioned here in connection with the privilege. However, in this particular case I have been authorized both by Washington and New York to testify to certain facts, so long as I keep in mind the privilege and raise the objection when I think that it might be something that they would not want me to testify to in connection with the general policy that has been outlined for such matters by the Division.

Now, in testifying here, I wanted to bring that out, so that in the event that I did in some instances object to answering, I would not be subject to censure or criticism for not doing so.

The Master: Of course, it is true if you testify to matters on direct examination, if you are permitted to do so and if the privilege has been properly waived, then you couldn't refuse to be cross examined upon the same subject matter that you have testified to on direct examination. You recognize that, I suppose? • • •

A. I just would like to add to my previous statement. I think some of this possibly could have been avoided because I don't think I would be privileged to answer the question as put with respect to what information I secured from the employees. • • •

The Master: Let me ask you this; you said there were certain things that you were willing to reveal; would that include the report, the written report that was made?

A. No, sir. • • •

Mr Lamb: There is a question now before the witness about what his examination revealed.

The Master: I think the question was as to whether or not he asked—will you read back the question?

(Question read.)

Mr. Nunneley: We objected to that because it is not material here, because of the fact that in that case the result of it would be hearsay; whether he did or didn't, it couldn't be material here unless the result of the inquiry could be brought into evidence.

The Master: I don't know, I wonder if it isn't material on this ground. If the investigation didn't cover that point, it would have some bearing on the weight to be attached to a failure to make a complaint on that point.

I think on this question as to whether or not he interrogated the employees on that point, I will—

Mr. Nunneley (Interposing) Well, with a yes or no answer.

The Master: I will overrule the objection on this particular question.

Mr. Nunneley: We submit, then, it should be restricted to the question or answer of yes or no.

The Master: I think he can answer it yes or no, whether or not you interrogated the employees—read back the question that was asked.

(Question read.)

The Master: Can you answer that yes or no?

A. Yes. In doing so, however—

Q. (By Mr. Lamb) As a result—

Mr Nunneley (Interposing) Just a minute.

Mr. Lamb: I beg your pardon. You wanted a yes or no answer, and you got it.

The Master: I will hear what he is going to add so long as it isn't a statement as to what the employees told you.

A. That is what I was going to say, that I didn't want to get into that. By answering the question I didn't want to have it taken as though I was waiving the privilege of evidence because I don't want to go into the answers that the employees gave me. I think that is privilege.

Mr. Lamb: That is his explanation. Now, may I ask this question?

The Master: Go ahead.

Q. (By Mr. Lamb) As a result of your inspection did

you find that the employees start to productive work immediately after punching the time clock?

Mr. Nunneley: Now, if the Court please, we are going to object to that. We think that this whole matter is simply done in here now for the purpose of making us object to things that we know are incompetent and he knows, of course, that that couldn't be anything but a conclusion, couldn't be anything but hearsay in addition to the privilege, if there was any privilege. • • •

The Master: I want to find out first whether it is a question that he is willing to answer.

A. May I have the question read?

The Master: Read it back?

(Question read.)

A. I would answer so long as it didn't open up all the avenues that I heard you mention just a moment ago. • • •

The Master: Well, of course, the witness in stating as to whether or not he was willing to answer the question, did make his answer conditional. He said he would be willing to answer the question only if it didn't compel him to go into the other matters on cross-examination, so I guess I am faced now with the necessity of ruling on the whole question.

Mr. Nunneley: That is right.

The Master: Because of the condition attached.

A. The only purpose in the condition was that I understood you to say that if I answered the question, it would make available to the defendants here the Department record and the written report at the time of the investigation, and that they also would be privileged to go into the question of certain individuals who gave this information to me as a representative of the Government.

The Master: You are unwilling to reveal either of those matters?

A. That is right. I think that definitely would be privileged evidence, if anything is.

The Master: I don't see how he can testify to his find

ings and conclusions from the investigation, wholly apart from any question of the hearsay rule, and then have the other side restricted so that it can't test the accuracy or credibility of the statements by going into the questions of reports that he made at the time, consideration of the facts upon which he based his findings and conclusions.

With this expert witness who was on the stand the other day, I took that position that he couldn't testify as to a general statement about revealing the facts, the names of the plants and detailed facts upon which he based his general conclusion. It seems to me that the witness' willingness to answer the question here is based upon a condition which can't be enforced by the Court, and that [illegible] fore he is invoking the privilege.

I think I will have to sustain the objection for that reason.

Mr. Lamb: The plaintiffs therefore proffer the answer which this witness would give if permitted to do so. The answer, if this witness were permitted to answer the following question, "As the result of your inspections did you find that the employees did start to productive work immediately after punching the time clock," the answer would be as follows: "I, as the supervising inspector of the Wage and Hour Division of the U. S. Department of Labor did, as the result of my inspection of the operations of the Mt. Clemens Pottery Company, find that the employees of the Mt. Clemens Pottery Company did start to productive labor and work immediately after punching the time clock." • • •

Q. (By Mr. Lamb) As the result of your inspection of the operations of the Mt. Clemens Pottery Company, did you find that the production belt started moving before what has been called the regular starting time?

Mr. Nunneley: Same objection. • • •

The Master: Did you observe, when you were around the plant, what time the production line started in the morning, directly?

A. In the morning?

The Master: Yes.

A. No, sir, not that I can recall.

The Master: Did you directly observe the time that the—or the actions of the employees when they reported for work in the morning, and their actions in moving from the time clock to their particular departments and starting their work in the department?

A. Not in the morning.

The Master: Did you do it in the afternoon?

A. Yes, sir.

The Master: Did you also do it—did you make any observations in the afternoon when the employees were reporting back to work after lunch?

A. They were reporting on a new shift.

The Master: On a new shift in the afternoon. I see. Did you make any observations when the employees were leaving the shift or leaving for lunch?

A. No, sir, not personally. * * *

Mr. Lamb: Now, about the question that is on the record:

> "As a result of your inspection, did you find that the production belt started moving before what has been called the regular starting time?"

The Master: I will sustain that objection insofar as it asks for the results of his investigation, apart from his personal observation.

Mr. Lamb: And then I will make the proffer on that question, that if the witness were permitted to answer the following question:

> "As a result of your inspection, did you find that the production belt started moving before what has been called the regular starting time?"

The answer which would be given by the witness would be as follows:

> "I, as supervising inspector of the Wage and Hour Division of the United States Department of Labor, as a result of my inspection of the operations of the Mt. Clemens Pottery Company, found

that the production belt started moving before what has been called the regular starting time."

Q. (By Mr. Lamb) Mr. Reifin, the Master asked this morning whether or not you had advised the Mt. Clemens Pottery Company relative to the correctness of their method of computing time worked, and I will ask you whether in fact you did write what has been marked as Exhibit No. 91?

(Copy of letter dated September 8, 1941, was marked Plaintiff's Exhibit 91.)

Mr. Lamb: (Handing paper to the witness.)

Q. (By Mr. Lamb) —representing a letter dated September 8, 1941, addressed to the Mt. Clemens Pottery Company, Mt. Clemens, Michigan, attention Charles E. Doll, Senior, vice president and general manager. Did you send that letter to the Mt. Clemens Pottery Company?

A. This is a copy of the letter which was sent to Mr. Doll.

Q. This is a correct copy of the original letter which was sent to Mr. Doll?

A. Yes, sir.

Q. And you have signed this copy, as I understand it?

A. That is right.

Mr. Lamb: We offer this. • • •

Mr. Nunneley: We want, first, to call your Honor's attention to the fact that the date of this letter is September 8, 1941, or several months after this suit was started, in the neighborhood of two years after the investigation was made. • • •

The Master: I think I will admit the exhibit and let the objections go to the weight to be attached to the evidence.

Mr. Nunneley: I move it be stricken.

The Master: Overruled.

Q. (By Mr. Lamb) I think you have said that you did send this letter, Plaintiff's Exhibit 91, to the Mt. Clemens Pottery Company, on or about September 8, 1941, is that correct?

A. Yes.

Q. Now, at the time that you made your inspection in 1939, Mr. Reifin, did you have any conversations with Mr. Doll, Senior?

A. Yes, sir.

Q. Can you advise us whether you discussed with him the matter of paying employees for the time that they were on the employer's premises?

A. I advised Mr. Doll—

Mr. Nunneley: Just a minute.

The Master: First, just answer whether you discussed that question with him.

A. Yes, I did.

Q. (By Mr. Lamb) Now, will you advise us the conversation?

Mr. Nunneley: What was the date of this?

Q. Will you give the month or year, that that occurred?

A. It was in November, 1939, either the 20th, 21st, 22nd, or—from the 20th through the 26th, one of those four days, I am not sure just which.

The Master: And, where did this conversation take place?

A. In Mr. Doll's office.

Q. (By Mr. Lamb) At Mt. Clemens, Michigan?

A. At Mt. Clemens, Michigan.

Q. All right. And what did you say? What was the conversation?

A. I informed him that time spent on the premises by any employees who were required to be there by the company was to be considered as hours worked, regardless of whether they worked or not. I explained to him the provisions of Section 3-G of the Act, which explained hours worked, or, I should say, defined hours worked, and also gave him a copy of our interpretative bulletin No. 13, which is the Wage and Hour Division's interpretation of that section.

Q. Did you, as a result—

Mr. Nunneley: We understand all this witness' testimony is taken over the objection on the ground--

The Master: I did not know you were objecting to this particular point.

Mr. Nunneley: I want it to be understood.

The Master: I don't see any ground on which you can object to this testimony in view of the testimony that you put in yourself. I will overrule that. I am quite positive in my opinion on that.

Q. (By Mr. Lamb) Did you, as the inspector of the Wage and Hour Division, at the time of the discussion referred to with Mr. Doll, advise Mr. Doll that by virtue of Section 3-G of the Fair Labor Standards Act to the effect that if employees were instructed to ring their time cards prior to the starting time, that any time thereafter would be considered as working time, and must be so computed?

A. Yes. They were to be considered as working beyond any time which they were required to punch in, or be on the premises. . . .

Q. (By Mr. Lamb) I would like to have you advise the Master whether or not you observed the time clocks, the location thereof, and the physical set-up at the plant?

Mr. Nunneley: Same objection.

The Master: I will find out whether he made observations on it.

Q. Did you see the time clocks?

A. Yes. I don't know whether I saw all of them or not. I think I did.

Q. Could you advise us, Mr. Reifin, whether or not it is a fact that there are benches located at the time clock to permit the employees to wait until the time when they punched the time clock?

A. Yes. Either benches or chairs. There is a place to sit, anyway.

Q. And those are provided for the employees to sit until the time they punch their time clock in?

A. That is right.

Mr. Nunneley: I suppose we should make the early risers stand up.

Q. (By Mr. Lamb) Now, did you have any other occasion to talk to Mr. Charles E. Doll, Senior, relative to the matter of the computation of hours worked, and so forth?

A. Well, I spoke to him several times during my inspection, but indicated that I would wait until I was through before advising him with respect to my findings, and then I spoke to him again on the telephone, long distance, and also in a conference in Detroit in October of last year.

Q. That is, you had a conference with Mr. Doll in October of 1941 in your office?

A. In the Wage and Hour Division, in my office.

The Master: When did this telephone conversation take place.

A. I talked to him two or three times, I think, long distance. The one that I am referring to was just prior to the conference in October and following the writing of this communication (indicating). I asked Mr. Doll to come into the office because I wanted to discuss these matters with him.

Q. (By Mr. Lamb) At the time of the conference that you had in your offices in Detroit with Mr. Doll, did you advise him relative to the requirements of paying employees while on the employer's premises?

Mr. Nunneley: Now, if the Court please, we object to that. Here again is something that happened long after, even after the suit was started. • • •

The Master: Well, there may be something in that. I will take the evidence, however, and let that go to the weight of the evidence, or if you can establish afterwards that it shouldn't be considered at all, I will give that consideration. • • •

A. Well, Mr. Doll was again advised with respect to the proper interpretation—or the Division's interpretation of what constituted hours worked, because we had

been informed that the violations had continued and we wanted to be sure that we had on record in writing, as well as in conference with him personally, the provisions of the act which we felt might be continuing in violation.

He was again advised concerning the interpretation of Section 3-G of the act. And also discussed at that conference was the payment of back wages to office workers whom Mr. Doll insisted had not worked overtime.

Mr. Nunneley: I move it be stricken.

The Master: When you say "he was advised," do you mean you advised him of that?

A. That is right.

The Master: Who were parties to this conference?

A. Mr. Doll, Senior, Mr. Doll, Junior, Carl Kahler, our senior inspector who works under my supervision, and Mr. Cross, Earl R. Cross, attorney for the Division, and myself.

Q. (By Mr. Lamb) And this conference took place in the Division's office in Detroit.

A. In my office in the Federal Building.

Mr. Nunneley: I move it be stricken. It all happened long after the suit was started.

The Master: I will let the evidence stand, and let that go to the weight of the testimony.

Mr. Nunneley: It consists only, apparently, of legal advice given to the party after the suit was started.

The Master: Well, your objection is on the record, and I will take it into consideration in weighing the evidence that is being given. I don't think it is of as much value as statements made prior to the time the suit was started and at the time the investigation was made.

Q. (By Mr. Lamb) You spoke of advising Mr. Doll about office workers working overtime. Will you advise us whether you observed office workers working overtime at the Mt. Clemens Pottery Company?

A. I did.

Mr. Nunneley: We object to that. There is no office workers involved in this suit. • • •

The Master: I don't want to expand the scope of this hearing at this late date, and I don't think that question is an issue here. It is the first I have heard anything of office workers. • • •

Mr. Lamb: May I then make a question of proffer on the office workers?

The Master: Yes.

Mr. Lamb: The question is, "Did you observe office employees of the Mt. Clemens Pottery Company who were subject to the provisions of the Fair Labor Standards Act of 1938 working overtime for which they were not reimbursed at the rate of time and a half?"

And the answer, if the witness were permitted to give the answer, is as follows:

> "Yes. From personal observation I saw employees of the Mt. Clemens Pottery Company in the office of the Mt. Clemens Pottery Company working overtime, for which they were not paid at the rate of time and a half. Also—"

Mr. Nunneley: Now, just a minute. On the matter of proffer, I take—

The Master: Let him complete his statement. • • •

Mr. Lamb: (Continuing) "Also, that the records of the office workers were incorrectly kept, and inaccurately kept; that when I talked to Mr. Doll about the records of the office workers in 1939, he denied that there were any such time records kept. Some time later, however, when I again conferred with Mr. Doll, he stated that they did have records of the time worked, but that it had been impossible to locate the same at the time of my first inquiry for, and request for, such records."

Mr. Nunneley: Now, if the Court please—

Mr. Lamb: Just wait until I finish, please.

> "From personal observation, I saw that these employees were working overtime, and that the records thereof were not being accurately kept by the office workers or the management of the Mt. Clemens Pottery Company."

Mr. Nunneley: Now, I move that the entire statement of Mr. Lamb, relative to his proffer, be stricken from the record, for the reason that it is simply an attempt to prejudice the record, that in the matter of making a proffer of proof, one has a right to make an offer to prove certain facts. In other words, one has a right, if he wants to, to make an offer to prove that the records were or were not kept, something of that sort. He has no right to state on the record what purports to be the testimony in detail of any individual witness, and for that reason we move it be stricken.

He has no right, nor can gain no benefit as testimony by any such statement as that. He does have a right, as I said before, to offer to prove facts, but to say that this one will testify to this or that one will testify to that, that is not a proper proffer.

Mr. Lamb: First, they object to allowing the witness to answer.

The Master: Just a minute. I am going to leave the statement and the objection on the record. It doesn't concern me, because I will hold that that evidence is irrelevant to the case, and I will disregard both the statement and the objection. It may only concern some higher court passing upon the record, and the court at that time can pass upon whether or not the proffer of proof meets the requirements of a good proffer of proof. I don't think I will stop to look up the law on that. • • •

Q. Mr. Reifin, from your personal observation, how long did it take employees in the Mt. Clemens Pottery Company to go from the time clock to their work bench?

Mr. Nunneley: Object to it for the same reason.

The Master: Let me ask you this, Mr. Reifin. The report that you made to your superiors, was that based upon both your investigation of the records and your talks with the employees, and your personal observation of the manner in which the employees reported for work?

A. Yes.

The Master: It covered the latter matter as well, personal observation?

A. Yes.

The Master: I have been thinking this question over that I took under advisement, and this brings up the same problem, that if the privilege is extended to the report which covered that matter, that the witness can't be permitted to testify on direct examination to his personal observation, because it would then be proper for the defendants to ask on cross examination as to the written report that he made at the time. Since he cannot reveal that, and since he will only answer the question if it doesn't become necessary to reveal that, I think the waiver of the privilege is conditional and I will sustain the objection.

You may make your offer of proof. • • •

Mr. Lamb: The witness, if permitted to answer, would say that from his personal observation of the employees of the Mt. Clemens Pottery Company, that said employees took between one minute and three minutes to go from the time clock to their work bench.

Q. (By Mr. Lamb) Mr. Reifin, you were discussing your conference with Mr. Doll when you testified this morning. Can you advise us whether or not you told Mr. Doll that the Mt. Clemens Pottery Company was subjecting itself to civil liability by employees because of the method of computation at the time of the employees as used by the company? • • •

Mr. Nunneley: Now, we object to that, if the Court please, for the reason that that would again involve going into the report and the records. I assume that if there was a liability at the time, that this man, as a dutiful inspector—we assume it would be in the report.

The Master: You can't produce Mr. Doll and have him testify to one side of the conversation and object to some other party to the conversation testifying to his version of the conversation.

I will overrule the objection.

A. I informed Mr. Doll at that time that for the purposes of administrative settlement of the case, we would not require restitution for periods of employment of in

dividuals that had not been paid for which were less than 15 minutes, but I did say that—I advised him, rather, of his probable liability under Section 16-B of the Act, and also advised and cautioned him against a continuation of any practice where employees were permitted to work any amount of time for which they were not paid and which was not recorded as hours worked.

Q. (By Mr. Lamb) When you referred to Section 16-B of the Act, will you advise the Court whether you referred to that part of the section permitting employees to bring an action for overtime pay.

A. That is right. That is Section 16-B. • • •

Q. (By Mr. Lamb) Do you know a man by the name of Joseph D. Fox?

A. Yes.

Q. Can you tell us who he is?

Mr. Nunneley: Now, just a minute. Who he is? I object to that as being an improper question entirely.

• • •

The Master: Who he is means what did he do, I presume.

A. The last I heard he was a representative of the Industrial Advisers in Cleveland, and he goes around the country making contact with employers with respect to advising them concerning the Fair Labor Standards Act. He is a former inspector of the Wage and Hour Division.

Q. Can you advise us whether he was dismissed from the service of the Wage and Hour Division?

Mr. Nunneley: We object to that, if the Court please.

Objection Sustained. • • •

Mr. Lamb: I would like to make a proffer of what the answer would be.

The Master: Yes.

Mr. Lamb: If the witness had been permitted to answer the question, he would state that Joseph D. Fox was discharged and dismissed from the Government service, the Wage and Hour division of the United States Department of Labor.

Mr. Nunneley: We move that the proffer be stricken out, for the reason that it is a matter—

The Master (Interposing) I will let the statement stand as the offer of proof.

Q. (By Mr. Lamb) Mr. Reifin, in your opinion is Mr. Joseph D. Fox, this former inspector of the Wage and Hour Division, an expert on the subject of the Fair Labor Standards Act of 1938?

Mr. Nunneley: We object to that, as to whether in his opinion Mr. Fox is an expert. That is a matter entirely for the Court.

The Master: I think that is a matter for the Court. You can ask him if there are any facts he knows as to what Mr. Fox does and as to his familiarity with business practices, but the determination of whether a man is an expert I think is a question for the Court.

Mr. Lamb: I would like to proffer the answer, if the objection is sustained; is it?

The Master: Yes, it is; as to the question of his opinion.

Mr. Lamb: The answer, if the witness were permitted to give it, is that Joseph D. Fox is not an expert on the subject of the Fair Labor Standards Act of 1938.

Mr. Nunneley: We move that the offer be stricken as not an offer of proof.

The Master: You may proceed. I will let the offer stand.

Mr. Lamb: I would have no further questions on direct, except that your Honor reserved the judgment about—

The Master (Interposing) Yes, I reserved that, and I have since ruled on it. It seems to me that that evidence must be excluded because of the non-access of the report.

Mr. Lamb: Do you recall what the question was, your Honor?

The Master: Yes, I do. The question was as to whether or not—

Mr. Lamb (Interposing) "As the result of your in-

spections, did you find that the production belt started moving before what has been called the regular"—

The Master (Interposing) The question was as to his personal observation of the time the production started on the afternoon shift. That isn't the precise wording of the question, but I think that covers the whole question.

Mr. Lamb: And your ruling is that the objection thereto is sustained?

The Master: Yes, on the ground that that is one of the matters covered by the report, since he said he based the report and covered in the report his personal observation as well as the conclusions he arrived at from conversations with the employees, and that since the report is not available, the testimony of the witness apart from the report cannot be given. So you can make an offer of proof on that.

Mr. Lamb: All right. My offer of proof is that if the witness were permitted to answer the question, he would say that from personal observation of the employment conditions and practices and operations of the Mt. Clemens Pottery Company, the employees on the afternoon shift so-called, punch their time clock several minutes before the quarter-hour on which the afternoon shift, so-called, starts; that they proceed immediately from the time clock and begin work within a space of one to three minutes after punching the time clock and begin productive work several minutes prior to the quarter-hour on which the so-called afternoon shift allegedly starts.

In other words, from personal observation this witness would testify, if permitted so to do, that the procedure which he observed in operation and practice at the Mt. Clemens Pottery Company is that the employees appear at the plant, go to the cloak-room, prepare themselves for labor by taking off coats and hats, and so forth, and that they may and do wait on the benches until 14 minutes of or as near thereto as they can punch the time clock, punch the time clock, proceed immediately within a space of a minute or two or three to their productive labors, and

that the said employees of the Mt. Clemens Pottery Company are actively engaged in productive work several minutes before the hour which has been labeled in these proceedings as the starting hour.

The Master: I would like to ask this of the witness: in your conversations with Mr. Doll that you related in November, 1939, did you make any reference to observations that you made in the plant as to the starting on the production line?

A. Yes.

The Master: What did you say?

Mr. Nunneley: Now, just a minute. We object to that conversation. We didn't testify to anything like that.

The Master: Well, I am holding that he can go into the question—

Mr. Nunneley (Interposing) What he said to Mr. Doll he has already stated.

The Master: What he said to Mr. Doll.

A. I did not state everything I said to Mr. Doll, I merely said here before in response to what I thought was the question of the computation of wages and the hours worked. There were other matters that I told Mr. Doll at that time that I didn't mention here.

The Master: Of course, that question does relate to the computation of time and hours worked, does it not?

A. Yes. This particular point, yes.

The Master: Do I understand you haven't given fully the statements you made to Mr. Doll in that connection?

A. I didn't mention everything I told to Mr. Doll. There were other matters, too, I discussed with him. The matter of record-keeping requirements and—

The Master (Interposing) Have you mentioned everything that related to the computation of time?

A. No.

The Master: Will you state everything that you said to Mr. Doll at the time relating to computation of time?

A. As near as I can recall I also—

Mr. Nunneley (Interposing) Understand we have the objection.

The Master: Yes, I understand you have the objection.

Mr. Nunneley: It would lead us back into the same report. In other words, if he says he said to Mr. Doll so and so, then we can go into the report and see if he reported that to his superiors.

The Master: Well, I am only accepting this testimony as rebuttal testimony, because the plaintiffs—

Mr. Nunneley (Interposing) It is all right. Then we have the right to cross-examine and go into that report, because if—I don't know what this witness is going to say. The Wage and Hour refused to give us any access to anything. But, suppose he says why, I told Mr. Doll that this was all wrong, and all about it. Suppose he said that, the whole procedure is wrong. I don't say he said that, but suppose he did? Doesn't that immediately put us on cross-examination in the position of saying, "Where is that report? What about that?"

It leads right up to the same proposition. We maintain there isn't anything this witness can testify to.

The Master: Of course, that would put the plaintiffs in the position of you producing one party to a conversation and having him testify, and their not being able to get the other party to testify at all to the conversation.

Mr. Nunneley: It isn't our part.

The Master: Well, I think I will take this testimony and get it on the record, and you can have your objection and I will take the matter under advisement until the conclusion of the case, in effect making a special record of the testimony. I can see arguments both ways, but here is a case which involves a conversation that Mr. Doll has testified to with this witness, and I am permitting him to testify, and have ruled before the noon hour when the question came up, that he was permitted to testify as to his version of the conversations with Mr. Doll. I haven't let him go beyond that to testify to facts that he observed that he didn't report to Mr. Doll. This is limited to your conversation with Mr. Doll and what you said at that time, according to your best recollection.

Mr. Lamb: This is the first conversation and not the one—

The Master: Conversations in November, 1939.

A. Of course, the part that I mentioned before in connection, with the necessity of recording all the time worked by employees, includes the time which they spend on the premises at the instigation of the employer. If they are required to ring in at a certain time, any time beyond that point would be considered hours worked, and Mr. Doll was so informed.

I also asked him to include in the computation of hours worked, the time that the employer had docked employees for 15 minutes to a half hour in some instances as disciplinary because of coming late, or for other reasons.

I informed Mr. Doll that the Division wouldn't take any action at that time, advising him that an equitable arrangement wouldn't be objected to such as if the employee came in three minutes late and he was docked 15 minutes, the employer would also pay him for 15 minutes when his card showed that he worked three or four minutes over time; that I would consider that as an equitable arrangement, which had not been in practice in the company from my inspection of its records and discussion with employees, and the conclusions which were reached during the investigation.

I also informed him of the proper record-keeping requirements, how to bring his firm into compliance with those requirements, discuss with him the matter of a proper interpretation of exemptions, such as executives and administrative employees.

The Master: Well, this is limited, the question is limited to what you told him with reference to the computation of hours worked, and in keeping of the records in that connection. We are not concerned here with the question of exemptions of administrative employees.

Mr. Lamb: So that the record may be straight, your Honor, at this point may I make the request of the witness to relate the conversation with Mr. Doll and his associates relative to that same subject matter of computation of time worked of employees at the conference which

occurred in the Detroit office of Mr. Reifin at the Wage and Hour Division. * * *.

(By Mr. Lamb) Now, may I ask at this time that the witness discuss or state the conversation which took place at the Detroit office of the Wage-Hour Division between Mr. Doll and his associates and the various officials of the Wage-Hour Division, which took place—was it October, 1941?

A. October, 1943.

Q. With particular reference to the advice of your division relative to the employer subjecting himself to liability by an employee's action to recover for this time worked?

The Master: I think he has already gone into it, hasn't he? Do you have anything to add to what you have already stated at that conference?

Mr. Nunneley: We object because it was long after the suit was started and it doesn't make any difference.

The Master: I understand there is an objection and I don't see anywheres near as much importance can be attached to that conversation at that time, even if it is admissible, because it was after the suit started. I attach much more importance to the conversation in September, 1939, but if he has anything to add to that, I will take it.

A. The matter was again discussed with Mr. Doll, because of the fact that we had again received complaints.

Mr. Nunneley: We object to that; whether they received complaints after this suit was started, is absolutely immaterial; it doesn't make any difference in this matter. Obviously a suit had been started. We don't know anything about the complaint, or anything connected with it, whether they were these people, or who went and made them. It can't make any difference in this case, things that happened after the suit was started, or what they told him. If there was a liability it had already been incurred and what his advice was.

The Master: I don't know, there is a defense here that the Wage and Hour Division in effect white-washed the employer.

Mr. Nunneley: At that time.

The Master: And that they are not making a complaint or bringing any suit against you. That has been pointed out or raised several times by the defendants.

Mr. Nunneley: That is right.

The Master: It may have some bearing on that. I will take his testimony on it.

A. I again advised him of his continued possible liability under Section 16-B of the Act, in the event that it was determined that the practices which we had—which were reported to us were true; in addition, of course, to the fact that if we found on investigation that these conditions were true, that it would be considered a willful and flagrant violation and would be so reported.

The Master: Any further questions?

Mr. Nunneley: I move it all be stricken out.

The Master: I think I will let the evidence stand. I think I will let that go to the weight. • • •

Cross Examination

By Mr. Nunneley:

Q. You said this morning that you had a subpoena to come here?

A. Yes.

Q. Will you produce it, please?

(Document produced.)

Q. When did you receive this?

A. This morning.

Q. This morning?

A. That is right.

Q. What did you say your title was?

A. Supervising inspector, Wage and Hour Division, United States Department of Labor.

Q. How long have you had that position?

A. Since June of last year.

Mr. Nunneley: That is all. • • •

PIERCE E. WRIGHT, was thereupon called as a witness on behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Wright?
A. 19178 San Juan Avenue, Detroit.
Q. What is your business or profession?
A. I am a labor relations counsel.
Q. How long have you been engaged in that line of work?
A. 20 years.
Q. Do you act individually or as a member of some organization?
A. Individually.
Q. In connection with your work have you had any occasion to make a study of the methods generally employed by factories as to computing hours worked?
A. Yes. On many occasions.
Q. Approximately how many factories have you studied?
A. Oh, I would hazard somewhere in the neighborhood of 100.
Q. And, in what general area are they located?
A. Within the State of Michigan.
Q. Did you find any similarity as to the methods employed by the different factories as to computing hours worked?
A. Yes, I have.
Q. Is there any standard practice as to method of computing hours worked in this territory?

Mr. Lamb: Objection.

A. Well, there is—

Mr. Lamb: Just a minute.

The Master: Just a minute. This is the same question I have ruled on many times before. I will take the testimony on that question of custom and practice.

A. There is a standard practice to this effect; usually a time card is punched some minutes before actual whistle or starting time. The time computed is from the whistle or starting time. The time clock or the card, likewise, is punched some minutes after the quitting time, and the hours on the premises or the work within the starting time and the quitting time are computed as hours worked for the day.

Mr. Lamb: I ask that the answer be stricken.

The Master: Denied.

Q. (By Mr. Cooper) In connection with your studies, have you had occasion to observe the time clock cards themselves?

A. Yes, I have.

Q. Could you give the Court any rough idea as to how many time clock cards you may have seen?

A. Oh, I would have to hazard a guess on that; it would run into many thousands.

Q. Now, on the basis of your own observation, can you say about how long before starting time on the average workers punch in the time clock?

Mr. Lamb: Objection.

A. Actual studies—

The Master: Just a minute.

Mr. Lamb: Are they referring to Mt. Clemens Pottery Workers?

The Master: No, I understand the reference is as to these plants he has observed generally.

Mr. Cooper: Yes, your Honor.

The Master: Again, I will take the testimony.

A. Actual studies that I have made reveal that most cards are punched anywhere from 14 to 6 minutes before

actual starting time, with the greatest bulk from 14 to 9 minutes before actual starting time. Now, that would prevail in plants where the rule prevails that employees shall not enter the plant more than 15 minutes before actual starting time. Where the rule prevails that they may enter the plant up to 30 minutes before actual starting time, you find that they will straggle all through the 15 minutes.

Mr. Lamb: I ask that the answer be stricken.

The Master: Same ruling.

Q. (By Mr. Cooper) Have you had any occasion to observe a situation as to whether or not there is wide variation between a large plant and a small plant, as to the amount of time before starting time that employees punch in?

Mr. Lamb: Objection.

The Master: The question is quite leading.

Mr. Cooper: I thought I simply asked as to whether he had occasion to observe as to any situation.

The Master: You asked about the variation, if there is any variation; have you observed any?

A. There isn't any variation except so many employees can go through a time clock, so there can't be much variation, that is between the large plants and the small plants. There is a limit on the number of men that can punch a time clock, number of employees.

Q. (By Mr. Cooper) What is that limit?

A. Well, with the hand tripper, as we know it, it will take about anywhere from 23 to 27 employees a minute, and with the new modern electric tripper, that will take as many as from 35 to 42 or 43 a minute. • • •

Q. Did you say that you observed in certain factories that you studied, that a 15-minute period or so is set up before starting time?

Mr. Lamb: Objection.

Q. (Continuing) In which employees are permitted to punch in?

Mr. Lamb: Objection to the form of the question.

The Master: Overruled.

A. To my knowledge about 95 per cent of the plants that I have studied, don't permit employees to enter more than 15 minutes before starting time, and further insist that they must leave within 15 minutes after quitting time. The only exception to that is where it is necessary for a man to change his clothes entirely, due to the type of work he may be doing. A man in a foundry may want to change his clothes from his skin up, and he requires a little bit more time. Where they are working in water, or they are working in damp places, they may change their clothes to a heavier type than street clothes and may want to wear boots, and all of that entails more time than usually allowed in the 15 minutes entering before starting time. Consequently those plants permit those men to come in a half hour before the starting time.

Q. Have you made any—

Mr. Lamb: I ask that the answer be stricken.

The Master: Unless I make a change on my ruling on a motion to strike, the record will show I deny all these motions to strike where I have overruled the objection. If I have sustained the objection, of course the question isn't answered.

Q. (By Mr. Cooper) Have you had any occasion to study the reasons for the adoption of such a 15-minute rule?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes.

Q. And what did you find?

A. Well, the management usually concludes to put 15-minute rule into effect for two reasons: one would be a morning reason and the other would be an afternoon reason, if there was an afternoon shift working. First, it requires opening up the plant, and lighting and heating. Some of the office force, perhaps, or some of the plant clerical force must be on the job while these men are coming in, and they don't like to have the men enter the plant

before those people are on duty. It is done in a great many instances for protective measures.

And regarding the afternoon shift, we find that if they come in more than 15 minutes before starting time, they interfere to a large extent with the day shift. They usually go over to the day shift machine, or the day shift place of work, and there is usually a lot of chatting and a lot of talking, and a lot of discussion which interferes with the normal production, and consequently by limiting it to 15 minutes, they don't have much interference with the change of shift.

Q. Do you have occasion, Mr. Wright—

Mr. Lamb: I understand I should not repeat the request?

The Master: I don't think it is necessary, and I think that just to save time, the defendants can stipulate that if an objection is made, it is unnecessary to make a motion to strike immediately after the answer, because your objection preserves your objection on the record.

Mr. Nunneley: In all cases where there is an objection, we are willing to have it understood that it is being followed by a motion to strike on both sides.

The Master: All right. You may proceed.

Mr. Nunneley: May the record show Mr. Lamb agrees to that?

Mr. Lamb: Oh, yes, certainly.

The Master: I did not mean to prevent you from making a motion to strike, but I was saying my ruling would be the same. Sometimes I have not directly passed on the motion to strike, but now the stipulation is made that each objection is automatically followed by a motion to strike.

Q. (By Mr. Cooper) Mr. Wright, do you have occasion to engage in collective bargaining negotiations?

A. Yes, I have negotiated perhaps—I have negotiated 22 agreements so far this year.

Q. In what capacity did you act?

A. As a negotiator between the employee and the employer.

Q. Is provision usually made either in a collective agreement or in the shop rules issued thereunder, as to a starting time?

Mr. Lamb: Objection. This question is entirely leading. • • •

The Master: I think that is clearly leading. You should ask if any provision is made, or to what extent such provisions are made, if any, instead of in the form is provision usually made, which naturally would lead the witness to say yes, it is. Will you re-state your question?

Q. (By Mr. Cooper) What provision, if any, is made in that connection, as to starting time?

Mr. Lamb: I have an objection to the question.

The Master: I will take the answer.

A. Provisions for starting time are usually in plant working rules. They are not a part of any labor agreement. I don't know of any labor agreement, and I have studied hundreds of them that contain any provision for actual starting time. It is usually a function of management to designate starting time, and management do that to suit management's convenience. • • •

The Master: By that do you mean the official starting time of any shift as to whether a shift is run from 7 to 3 or 8 to 4?

A. Yes. Agreements usually provide that a work day shall consist of 8 hours.

The Master: But, they don't designate what hours of the day?

A. I don't know of any that ever have, except the building trades used to years ago put a starting time in at 7 o'clock, and they have even done away with that lately.

Q. (By Mr. Cooper) What provision, if any, is found in shop rules as to starting time?

Mr. Lamb: Objection.

A. Provisions in shop rules for starting time—

The Master (Interposing) Overruled. Wait in each

case until counsel makes an objection or fails to make one.

Mr. Lamb: There was an objection.

The Master: I will take the answer. I would like to have you tell me what shop rules are, though, in connection with the answer.

A. Shop rules are safety rules and rules of conduct, and shop procedure, usually published by management. The safety rules will contain almost everything that the management can think of that should be included to prevent accidents in the plant. The rules—the shop procedure and shop rules have to do with punching of the time clock, and with horseplay in the plant, the use of tools, the starting time, the lunch time, the quitting time, and setup provisions that must be followed by the employee if he is off a day to report to the employment department and give a reason as to why he is off, and, well, I just about covered everything. It is usually covered in about anywhere from 40 to 60 rules.

The Master: How are these rules disseminated among the employees?

A. They are usually printed, distributed, or published on the bulletin boards, depending on the number of employees of a plant. You couldn't expect a plant of 60 employees to go to the extent of publishing a little bit of a booklet. They can have the same effect by publishing them, typewriting them and putting them on bulletin boards in the plant.

The Master: Now you may answer the question Mr. Cooper asked. Will you read it back, Mr. Reporter?

(Mr. Cooper's question read by the reporter.)

A. Simple little rules simply stating whistle time will be 7 A. M., or starting time shall be 7 A. M. That is the only two phrases I have ever used, or I have ever seen.

Q. (By Mr. Cooper) What provision, if any, is found as to the use of time clocks?

The Master: In shop rules or on union agreements, or both?

Mr. Cooper: Either or both.

Mr. Lamb: Let the record show an objection.

A. I know of none in shops or labor agreements—

The Master (Interposing) Objection is noted and overruled. You may answer.

A. I know of none in labor agreements. The usual verbiage covered regarding time clocks is substantially that each employee must punch his own time clock; punching the clock of another means immediate dismissal; he shall be sure that his card is placed in the proper rack after he has punched it, and he shall not make any erasures or any marks on the card. If there is anything on the card that does not meet with his immediate approval, he should immediately take it up with the time keeping department. That, in short, is what is covered regarding time clocks.

The Master: In the shop rules?

A. Yes, sir.

Q. (By Mr. Cooper) Mr. Wright, have you ever seen before what is marked Exhibit 71?

A. Well, this is a general instruction—

Mr. Lamb: Just a second, wait a second. Let him just answer the question.

A. Yes.

Q. (By Mr. Cooper) And where did you see it?

Mr. Lamb: Objection.

A. In the office of the Briggs Manufacturing Company in the City of Detroit.

Mr. Lamb: That is no way to prove it.

The Master: I will wait until he offers it. He can ask questions leading up to its offer. As to whether it is to be admitted, I will wait until he offers it.

Q. (By Mr. Cooper) Have you ever had any conversations about it out there?

Mr. Lamb: Objection. It is immaterial whether he had conversations about it out there. Maybe this isn't the same one.

The Master: I will see what his answer is.

A. Yes, I have discussed it with Mr. Landis, the assistant personnel director.

Mr. Lamb: Let the record show a request that that answer be stricken.

The Master: Are you trying to prove the existence of the agreement by that method?

Mr. Cooper: Not yet, your Honor.

Mr. Lamb: What difference does it make if he and Mr. Landis talked about some

Mr. Nunneley (Interposing) Do you want the case to take all summer?

Mr. Lamb: I am not interested in violating ordinary rules of evidence.

Mr. Nunneley: O.K. Apparently you are.

Mr. Lamb: And the conversations he had with Mr. Landis out at the Hudson Motor Company or some place else—

The Master (Interposing) He hasn't told what the conversation is.

Mr. Lamb: I say it is immaterial. Supposing he had a talk with Mr. Ford or Joe Bush or something?

The Master: It is probably a preliminary question. I will leave it on the record until I see how it develops.

Q. (By Mr. Cooper) Looking over that exhibit, does that in any way refresh your recollection—

A. (Interrupting) Yes, it does.

Q. (Continuing) —as to—

Mr. Lamb (Interposing) Just a second.

The Master: Just a minute.

Q. (Continuing) —as to whether or not provisions are or are not made in collective contracts as to the use of time clocks?

Mr. Lamb: Objection.

The Master: Can you show the witness an exhibit not in evidence to refresh his recollection?

Mr. Nunneley: Surely.

Mr. Cooper: Surely. It is common practice.

The Master: I guess that is so. I think that is true, you can do so if it refreshes his recollection independent

of the exhibit. I will overrule the objection.

A. Yes, it does.

Q. (By Mr. Cooper) Do collective bargaining agreements that you have seen contain provisions as to the use of time clocks?

Mr. Lamb: Objection.

A. Very seldom.

The Master: Just a minute. He has already testified on that. I will take his answer in the light of any refreshing document that has been shown to him.

A. I have never seen it in one, except this one.

The Master: Had you ever seen it in that before?

A. Yes, we discussed this at Mr. Landis' office.

Q. (By Mr. Cooper) What connection, if any, Mr. Wright, is there between shop rules and collective agreements?

A. Shop rules—

Mr Lamb (Interposing) Objection.

The Master: Overruled.

A. Shop rules are an addenda to an agreement. Shop rules in many instances are the clearance points, if I might say, of provisions of an agreement. They help to aid—they aid and assist in carrying out the provisions of an agreement. I know that every—

Mr. Lamb (Interposing) May I interject the question whether the witness is testifying that shop rules are part of an agreement or not part of an agreement?

A. They are usually considered part of an agreement between management and employee.

The Master: You can go into that on cross-examination.

Q. (By Mr. Cooper) In the ordinary practice, Mr. Wright, as you have observed it, what connection, if any, is there as to a provision in a collective agreement or shop rules as to the use of time clocks and the computation of hours worked?

Mr. Lamb: Objection. There are several questions involved in that one, of course.

The Master: Well, if he confines it too closely, it will be objectionable on the grounds it is leading. I think it suggests the subject matter to be testified to by the witness.

I will overrule the objection.

Will you read back the question?

(Question read.)

A. Well, the shop rule will provide that the starting time shall be at a specific hour, and then the ordinary practice is to compute the number of hours if the card shows the employee is actually within the plant during those hours. That is a standard practice.

Mr. Lamb: I ask the answer be stricken.

The Master: Denied.

Q. (By Mr. Cooper) By the way, do you know of any plant, Mr. Wright, that computes hours worked from the minute the time clock is punched?

A. In my experience, none.

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: I don't see how it is material.

Q. (By Mr. Cooper): Let me ask you whether or not in the course of your collective bargaining negotiations you have ever heard any suggestion raised in that connection?

Mr. Lamb: Objection. What difference does this make? Supposing he sat in a meeting, part of a conference where it was discussed or it wasn't discussed? • • •

The Master: Well, I doubt very much its materiality. In fact, I can't see it. But, I will get the witness' answer, whatever it is, for whatever it is worth on the record.

A. I have seen nor heard of no such demands. • • •

Q. (By Mr. Cooper) Let me ask you this, Mr. Wright, is there any industry that does it that way?

Mr. Lamb: Objection.

The Master: I will take his answer to that.

Mr. Lamb: He hasn't knowledge, certainly.

A. None that I have knowledge of.

The Master: On that previous question I will hold that that is immaterial and exclude it, but simply leave it on the record pursuant to Rule 43-B again, or C, of the Rules of Federal Procedure..

Q. (By Mr. Cooper) Now, Mr. Wright, in the course of your work have you acquired familiarity with, or knowledge of, any collective agreements of shop rules?

Mr. Lamb: Objection.

A. Yes, I have.

The Master: Overruled.

Q. Mr. Wright, have you made any tabulation of clauses in collective agreements of shop rules?

A. Yes, I have.

Q. What is the document which has been marked for identification as Exhibit 92 (handing exhibit to witness)?

• • •

A. This is an excerpt from collective agreements and shop rules issued pursuant thereto with reference to hours of work and use of time clock.

Q. Did you prepare that exhibit? • • •

A. Yes, I did.

Q. (By Mr. Cooper) Do you have here, Mr. Wright, the documents on which you prepared that tabulation?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: We don't know that those are authentic documents.

A. Yes, sir

Q. (By Mr. Cooper) How did you acquire those documents that you have there?

Mr. Lamb: Objection.

Mr. Cooper: Let me complete the question for the record by referring to them as being marked as Exhibits 66 through 73, inclusive.

The Master: He may answer.

A. That marked Exhibit 72 I procured from Mr. Charles Miller, proprietor of the Michigan Steel Tube Products Company at his plant. This marked Exhibit 70 I pro

cured from Mr. Landis, assistant personnel director of Briggs Manufacturing at his office. This marked Exhibit 66 I procured from the personnel director of the Budd Manufacturing Company at his office. This marked 67 I procured from the personnel director of the Hudson Motor Car Company. This marked 71 I procured from Mr. Landis of the Briggs Manufacturing Company at his office.

The Master: How did you make your selection? Were you looking for particular pamphlets?

A. If I may answer that this way: During the normal course of events we drop in to see these personnel men, to see what they are doing, to naturally pick up some new ideas if you can, and you usually get into the discussion of their agreement, discussing of their shop rules, you get a copy of it, add it to your own file and to your own library as a reference later, something you may want to use later on.

The Master: In connection with this study of them, you haven't gone out particularly to these men to get these agreements? You already had them in your files?

A. Yes.

The Master: You already had them in your files?

A. Yes.

The Master: Were these the only agreements you have in your files?

A. No, I have over 200 similar booklets.

The Master: How did you happen to select these particular ones from the 200?

A. Because they were typical.

Q. (By Mr. Cooper) Can you state, Mr. Wright, whether or not the various documents you have before you, the numbers of which I referred to, commonly circulate among men engaged as labor relations advisers?

A. Yes, we have no difficulty getting them. They commonly circulate among us.

Q. Whether or not in the ordinary course of your business you acquire a number of such documents?

A. Yes, I must have 200.

Mr. Lamb: Objection to this.

A. Similar booklets.

The Master: Overruled.

Q. (By Mr. Cooper): For what purpose are they used, if any?

Mr. Lamb: Objection.

A. Study and reference.

Mr. Lamb: Just a second until he passes on the objection.

The Master: Overruled.

A. Study and reference. We read those just as lawyer might read a law book.

Mr. Lamb: That isn't any way of establishing—

Q. (By Mr. Cooper) Can you state whether or not—

The Master (Interposing) This is all preliminary, it seems to me, and I think he is entitled to ask the preliminary questions.

Q. (By Mr. Cooper) Can you state whether or not the printed copies, purporting to be copies of collective agreements and shop rules, are commonly accepted as copies by men engaged in labor relations work?

Mr. Lamb: Objection. What difference does it make whether they commonly accept it or don't commonly accept it?

The Master: Are you trying to identify these exhibits to show they actually represent the agreements and shop rules in force in the various plants by showing that they are commonly accepted and passed out?

Mr Cooper: Not that far, your Honor. I am attempting to identify these, and I propose to offer them as printed copies of contracts and shop rules which have a common circulation among men engaged in labor relations work, which are accepted and acted on as true copies of the contracts, and that I think such identification is sufficient to identify them for the purpose I have in mind as being a contract.

Now, if any question—and, as Mr. Nunneley suggests, as establishing the practice and the custom.

Now, on the particular question as to whether a particular contract is in force at a particular time at a particular company or whether since the publication of the document it has in any respect been changed, that, I think, is immaterial.

And, incidentally, I believe that all of them are current and that there has been no change. But that, I say, is immaterial on the question as to whether or not there has been some particular change or modification in a particular contract. That, of course, could be shown. I do believe, though, that we are identifying them and have identified them as being copies which are commonly used and accepted, and that they have been shown to represent typical copies of contracts and shop rules showing practice and custom as to provisions made therein with reference to the use of time clocks, and so forth.

And I offer in evidence the tabulation prepared by Mr. Wright, and as supporting the tabulation, the various documents, purported copies of contracts and shop rules which have been marked. • • •

The Master: Well, he can testify and I will take under advisement the question of whether or not it is necessary to prove their authenticity. • • •

Q. (By Mr. Cooper) Looking over Exhibit 92, Mr. Wright, I notice you have included certain provisions from collective agreements or shop rules, as to hours of work. For example, what provision is made in the collective agreement between Briggs Manufacturing Company and the UAAIW-CIO as to hours of work? • • •

Mr. Nunneley: We feel the Court should direct the plaintiffs to produce the originals of all the contracts, for the reason that the plaintiffs are an affiliate of the CIO, and I think almost every one of those contracts is an affiliate of the CIO, and they are things that they are peculiarly and immediately in a position to get hold of every one of them.

The Master: There is a question before the witness now, and I think you should make that motion later. I

will take that into consideration in determining whether or not I am going to require the authenticity of the documents to be proved by the defendants.

I don't want to confuse my mind with too many questions at once.

Read the question.

(Question read.)

A. It provides that each shift or group shall have a standard starting and quitting time, subject to demands of production.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Is that sort of provision found in other collective agreements that you are familiar with?

A. Similar provisions; yes.

Q. What provision is made in the collective agreement between the UAW-CIO and the Budd Wheel Company, as to hours of work?

Mr. Lamb: Objection.

The Master: Same ruling.

A. There shall be a specific starting time, and quitting time. That the starting and quitting time may be changed where necessary to maintain continuity of employment by agreement of the committees and one or more members of the executive shop committee. Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than 30 minutes before starting time.

Q. Is there anything unusual about that kind of provision in a collective agreement.

Mr. Lamb: Objection.

A. Nothing unusual.

The Master: Overruled. . . .

Q. (By Mr. Cooper) I was going to ask you, Mr. Wright, how many of the instances cited under that first sub-heading "Hours of work," are taken from collective agreements, and how many from shop agreements?

Mr. Lamb: Objection.

The Master: Overruled.

A. Three of them from collective agreements and one from shop rules.

Q. (By Mr. Cooper) Now, what is the name of the second sub-heading in this compilation?

A. "Use of time clocks."

Q. Do you find in there any "from any collective agreement as to use of time clocks?"

A. Collective agreement from the CIO-Briggs Manufacturing agreement.

Q. What provision is made in the CIO-Briggs Manufacturing agreement?

A. It provides that every employee must ring his clock card:

> "A. Before starting his time; B. At the completion of his work.
>
> "Employees must be in their departments ready for work when the signal is given for work, and must remain until the signal is given to quit."

Q. What provision is made in the shop rules in the Briggs Manufacturing Company as to use of time clocks?

The Master: I wonder if it is necessary to have the witness repeat everything that is in this exhibit?

Mr. Cooper: Perhaps not. If it is received, it will speak for itself.

The Master: It will be received just as readily as the testimony of the witness will be received, so that I think if he has prepared the exhibit, it speaks for itself, and it is unnecessary to ask the witness about it.

Mr. Cooper: I think we better put some of this in the record.

Mr. Nunneley: It will only take a minute.

Mr. Cooper: I am asking him about particular agreements that he is particularly familiar with.

The Master: Well, all right, go ahead.

A. The Briggs shop rules provide that: Employees will be assigned a clock or time card upon which they are required to register the time each working day as follows:

> "(1) Before starting work.

(2) Once during lunch period, (within 15 minutes prior to the end of the period).

(3) After completing work.

Employees failing to register time cards either in or out will be penalized one-quarter hour's time. Employees must be in their departments ready for work when the starting signal sounds, and remain at work until the signal sounds at regular quitting time."

Q. (By Mr. Cooper) Did you say once during the lunch period?

A. Yes.

Q. Is there anything unusual about that kind of a provision?

A. In the lots of times, no; because they may have so many men employed in there, and they may not have time keepers checking up during the day and the men may be, the employees may be doing an operation that don't require their being at their place of employment all the time, and in order to make sure that they are on the premises for the full working hours, they may then ring the time clock at noon. Smaller plants very seldom have such a rule.

Q. Well, would any time be deducted at noon?

A. There usually—they are usually penalized if they do not ring at noon, because in the afternoon, you see, the time keeper will come out and take the time cards out of the rack at noon and check up to see whether everybody has punched or not, and, of course, if the card is not punched, they immediately send in to the department to see whether the man is there. Of course, if he is there, then he has to give a reasonable excuse as to where he was and why he did not punch the time clock that noon.

Q. What can you say, Mr. Wright, as to whether the provisions you read from the Briggs agreement and shop rules are unusual or typical?

A. They are nothing unusual about them. They are typical rules in force in the plants.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Is there also a final sub-heading on the Exhibit-92 as to certain miscellaneous clauses relating to computation of hours of work?

A. Yes.

Q. I ask you whether or not a number of those miscellaneous clauses relate particularly to cases of an employee coming in after the regular starting time?

A. Yes.

Mr. Lamb: Objection.

The Master: Overruled.

Q. What is a typical sort of provision for that case?

Mr. Lamb: Objection.

The Master: Overruled.

A. Some companies divide the work into quarters, and some into sixths, and they will penalize the employee for anything up to 10 minutes of tardiness. Where they divide the hour into quarters. Of course, it is up to 15 minutes or one-quarter of an hour for tardiness.

The Master: Are these provisions of shop rules or of the collective bargaining agreements?

A. Shop rules.

The Master: Are they provisions of shop rules that are drafted pursuant to the provisions of agreements which state that they must be taken up with the grievance committee?

A. Yes.

The Master: As well as the other type?

A. Yes, as well as the others.

The Master: All right, go ahead.

Q. (By Mr. Cooper): Does Exhibit 92 indicate any particular provision as to computation of hours of work in the collective agreement between the United Mine Workers and Coal Operators Association?

A. Yes, on page 3.

Mr. Lamb: Objection.

The Master: Overruled, with the understanding that

or subject to the general understanding under which this testimony is being received.

Q. (By Mr. Cooper) And what provision is made in that connection in that particular agreement?

A. "7 hours of labor shall constitute a day's work. The 7-hour day means 7 hours' work in the mines—"

Mr. Lamb: Just a second. Is that in this exhibit?

A. Yes, page 3.

Mr. Lamb: Page 3.

A. (Continuing) "at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those mine workers required on account thereof; and also excepting that number of mine workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at the starting time and departing from the same at quitting time, shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named." • • •

Q. (By Mr. Cooper) Mr. Wright, in the course of your work, have you ever had any occasion to examine the actual time clock cards in factories?

A. I have, Mr. Cooper.

Q. What has been the occasion of such examinations that you have made?

A. Oh, various reasons. Sometimes a dispute of computation of hours worked, and sometimes to examine the clock as to the proper punching. Sometimes compiling as to the number of employees that go through a clock at a stated hour as shown on the cards. I perhaps have examined 10 or 12 thousand cards in years gone by.

Q. Over what period of time have these studies of time cards extended?

A. 20 years.

Q. Down to how recently?

A. Yesterday afternoon, a grievance procedure, a man claiming overtime that the clock didn't show.

Q. Now, showing you, Mr. Wright, Exhibits 3-F, 35-F, 62, 63-EE, 1-LL, 31-LL, 34-KK, which have been hitherto identified as certain time clock cards, and ask you to examine the punchings as shown on those cards, and state how they compare with the ordinary time clock cards that you have observed?

Mr. Lamb: Objection.

The Master: Overruled.

A. I would say that they were typical time clock cards.

The Master: We will take a very brief recess here

(Recess.)

Q. (By Mr. Cooper) On the basis of your observations, Mr. Wright, is there anything unusual about an employee punching in a time clock at 14 minutes before a starting time every day for 2 weeks in a row?

Mr. Lamb: Objection.

The Master: Overruled.

A. I wouldn't say there was anything unusual about it. I found at times where personal observations over weeks and periods at a time, that almost the same employees punched in at the same, almost at the same minute each morning. Now, that is brought about because you don't permit them to go into the plant except 15 minutes

before starting time, and they are congregated around the time office, and just as soon as the time to punch in arrives, they start together to punch their clock. Now, if 30 men go through a minute, that man don't necessarily have to be first in line each morning. He may be 5th or 10th or he may be 29th, and still punches in at 14 minutes of.

Mr. Lamb: I ask the answer be stricken.

The Master: Overruled. • • •

Q. (By Mr. Cooper) What is your observation, Mr. Wright, as to the usual and customary practice in the State of Michigan relative to the use of time clocks?

Mr. Lamb: Objection.

The Master: Overruled.

A. Well, time clocks are generally used. I know of very few plants that don't have time clocks, even as many as or as little as 15 employees maintain a time clock, even though it may be an old style tripper that is 20 years old. The practice is to issue each employee a card, making the employee responsible for that card, making him responsible for the punching of that card, and should any mistakes arise immediately that employee must report to his superiors any mistake noted on the card.

Q. What is your observation, Mr. Wright, as to the usual and customary practice in the State of Michigan as to computation of hours worked from the time clock cards?

Mr. Lamb: Objection.

The Master: Overruled. • • •

A. The hours worked for which wages are paid are usually computed from the specified starting time to the specified quitting time as shown on the time card. The card will show from three to 14 minutes punched prior to the starting time, and will show the same amount after the quitting time.

Q. (By Mr. Cooper) What is your observation, Mr. Wright, as to the usual and customary practice in the State of Michigan with reference to any requirement as to where a worker is required to be at the regular starting time?

Mr. Lamb: Objection.

The Master: Overruled.

A. The usual demand of the employer is that the worker be at his place of employment, at his bench or his place of work, at starting time, and he shall not leave there until the signal is sounded for the quitting time.

Q. I would like to ask you, Mr. Wright, whether or not the usual and customary practices which you have just described with reference to the use of time clocks and the computation of hours worked, and the requirement of being at one's place of work ready for work, are usual and customary in plants that you know of, about operating under collective agreements with unions?

A. Yes, sir.

Mr. Lamb: Objection. It would be immaterial and leading.

The Master: Overruled.

A. Yes, it is customary.

Q. (By Mr. Cooper) Does that include the plants whose agreements or shop rules are referred to in Exhibit 92?

A. Yes, it does.

Mr. Lamb: Objection.

Q. (By Mr. Cooper) Does it include other plants?

Mr. Lamb: Objection.

A. Yes, it does.

The Master: Overruled again.

Mr. Cooper: Cross examine.

The Master: Just a minute. I had a question if I can think of it.

You stated that in forging plants, that some of the employees would make a complete change in clothing when they went in the premises?

A. Yes.

The Master: Have you had enough—

A. Forging foundries.

The Master: Forging foundries?

A. Yes.

The Master: Have you had enough experience at those

plants to know whether or not that is usually computed by the employer as being on the employer's time or on the employee's time?

A. It is on the employee's time; even to the extent that—well, particularly in foundries an employee often gets tools and equipment from the tool room prior to starting time, the actual computed time.

The Master: And you state that that is on the employees' time?

A. Yes, sir.

The Master: I had another question following that up; I can't think of it offhand. You may proceed with cross examination.

Cross Examination

By Mr. Lamb:

Q. What was your business address, please, Mr. Wright?

A. 1951 Union Guardian Building.

Q. Would you tell us when you observed the conditions at the Mt. Clemens Pottery plant?

A. I have not been at the Mount Clemens Pottery plant.

Q. Never?

A. Never; other than to drive by it.

Q. So you are not able to tell us how the employees punch their clocks?

A. I am not.

Q. Or whether or not they are instructed to proceed immediately to work?

A. I am not.

Q. And you are not able to tell us whether or not the employees do, in fact, punch their time clocks, and within a minute or two get into productive work?

A. I am not able to tell you.

Q. So not being able to tell us what the practice is at the Mt. Clemens Pottery plant in respect to these employees, and what the practice is, you are not able to

tell us whether their practices are typical of the practices of industrial plants anywhere else, are you?

A. Not knowing their practices, I am not.

Q. You are not able to tell us whether or not the practice followed by the Mt. Clemens Pottery plant is similar to or typical of, or identical with—

A. No.

Q. —any other plant in the United States, are you?

A. I am not.

Q. And you are not able to tell us, are you, whether or not the employees take off their coats and hats and prepare themselves for work before punching the time clock in the Mt. Clemens plant, are you?

A. I don't know what their practice is, I am not.

Q. So you don't know whether that practice differs from the practice in other plants about which you may have testified?

A. Well, if that is the practice there, it don't differ from some other plants.

Q. I see. But I am asking you whether you are able to tell us whether the practice followed by the employer and employees in the Mt. Clemens plant is similar to that in other plants.

A. I don't know their practice, other than what you have just stated.

Q. So you wouldn't be able to tell us—

A. No.

Q. —what the practice is, so you wouldn't be able to tell us whether that is typical or similar to the practice followed in other plants?

A. Except if that is their practice, it is not unusual.

Q. Not unusual to prepare themselves for work before—

A. No.

Q. —going through the time clock?

A. No.

Q. You are not able to say whether or not the employees do at the Mt. Clemens plant?

A. No, I can't.

Q. Now, you are not able to tell us what the practice

is in respect to continuing work in the Mt. Clemens plant up to the 14 minutes after, for instance, the noon hour?

A. No.

Q. Or the time when they come back to employment from their noon recess 14 minutes before the hour that they proceed immediately to work, then?

A. No.

Q. And you are not able to tell us whether there is a starting whistle or bell or a gong in the Mt. Clemens plant, announcing the time when the employees' starting time is?

A. No, I am not.

Q. When you testified about employees at other plants who may work up to a starting time as represented by the blowing of a whistle, you didn't intend to convey to the court any inference that that was the practice at the Mt. Clemens plant? • • •

Q. (By Mr. Lamb) Do you know what type of time clocks they have at the Mt. Clemens plant?

A. I do not. There are only four types manufactured.

Q. I am asking you if you know the type in the Mt. Clemens plant, pottery plant?

A. I do not.

Q. Do you know the number of employees who pass through the time clocks of the Mt. Clemens Pottery Company?

A. I do not, but if they have a standard clock there, there wouldn't be any exception to the average.

Q. Do you know how many pass through the time clocks at the Mt. Clemens Pottery plant?

A. I do not.

Q. And you don't know whether they go through in single file or double file?

A. I do not.

Q. Therefore, not knowing what the procedure followed at the Mt. Clemens plant, pottery plant, is in that regard, you cannot say whether that procedure is similar to or different from that followed in other plants; is that correct?

A. No, I couldn't.

Q. You don't know—I will put it in the negative fashion. Are you aware of the starting of a belt, production belt, at the Mt. Clemens plant prior to starting time?

A. I am not.

Q. You have no knowledge of that fact?

A. No knowledge of it.

Q. And you are not aware, therefore, that the employees of the Mt. Clemens plant after punching the time clock are in their places of productive labor within a minute or three minutes from the time when they punch the time clock?

A. I am not aware of that, Mr. Lamb. • • •

Q. (By Mr. Lamb) You are not able to say, are you, Mr. Wright, as to whether the employees of the Mt. Clemens Pottery Company go to the plant, go to the cloak room, prepare themselves for productive labor, punch the time clocks, within a minute to two minutes are engaged in actual physical productive work, and that they begin their actual productive work at least several minutes prior to what is labeled a 7 o'clock, for instance, starting time?

A. Part of your question, Mr. Lamb, I would say is an impossibility. Starting work within one or two minutes after punching a clock, that just isn't in the cards. I have observed thousands of working men, and I have never been able to see the fellow that has been able to say that yet. We certainly would like to find that fellow in industry.

Q. Well, that is interesting. Now, do you say that you know something about this practice in the Mt. Clemens Pottery Company?

A. No, I don't. I am just taking your question. Part of your question is an impossibility.

Q. Okay. Now I will thresh that out with you. Do you say that it is a physical impossibility for the employees of the Mt. Clemens Pottery Company who work next to the time clock, for instance, not to punch their

time clock and wheel a brush within a minute, or a few seconds, after punching the time clock?

A. If you are working next to the time clock it is possible.

Q. O. K. Now, if they walk for a minute, isn't it possible after punching a time clock at the Mt. Clemens Pottery plant to wheel a brush if the distance between the time clock—

A. (Interrupting) I—

Q. Wait a minute until I finish this question. We understand what you may want to testify to.

The Master: Finish your question.

Q. Do you say that an employee who punches his time clock and walks for one minute cannot be wheeling a brush at the end of that minute?

A. I don't think it is possible.

Q. O. K. Were you instructed to say that?

A. I know nothing of the procedure of the Mt. Clemens Pottery plant.

Q. Who are you hired by to testify in this case?

A. Mr. Cooper.

Q. You didn't tell us the name of your organization with which you are associated?

A. I am an individual. • • •

Q. Did you say that—did you give us the names of the companies you represent?

A. No, I didn't.

Q. Will you give us the names?

A. H. and H. Tube Company; Detroit Rendering Company; Darling & Company; Progressive Welder Company; Hydromatic Manufacturing Company; Acme Foundry; Call Foundry; Stewart Foundry; Grand Rapids Chair Company; Owosso Manufacturing Company. • • •

Q. Now, I would like to have you answer this question. Do you say that an employee of the Mt. Clemens Pottery Company has not punched the time clock and begun work within one minute after the time?

A. From my observation—

Q. From your personal observation

A. —over a period of years—

Q. (Interposing) From your personal observation at the Mt. Clemens Pottery Company?

A. Not at the Mt. Clemens Pottery Company, no. I haven't been in the Mt. Clemens Pottery Company.

Q. You have no personal knowledge of that at all?

A. No.

Q. So you are not able to tell us?

A. No.

Q. Whether or not an employee of the Mt. Clemens Pottery Company, who is instructed to report at work at 6:46, for instance, and does so report and punch his time clock, you are not able to tell us from any personal knowledge—

A. No.

Q. —whether or not it is possible for that employee to be in productive labor within a minute or two—

A. No.

Q. —after punching the time clock?

A. Having never made that observation there, no.

Q. Do you know the type of work that these people do at the Mt. Clemens Pottery Company?

A. I have a fair idea.

Q. From your personal observation?

A. I have a fair idea because of the nature of the name of the company and the type of material they manufacture. I have never been very closely associated with pottery companies.

Q. Do you know what the sagger operations are?

A. No, I don't.

Q. Or operations on the saggers?

A. No.

Q. Or brushing or finishing?

A. No, I don't.

Q. And you don't know that the brusher can be actively operating on her work immediately upon her picking up a brush and going to work, do you?

A. No, I don't.

Q. Have you ever testified before in a wage and hour case?

A. Never in a wage and hour case, no.

Q. Do you attempt to advise people—

A. No, sir.

Q. —on the Wage and Hour law?

A. I have nothing to do with the Wage and Hour Labor relations entirely.

Mr. Lamb: That is all.

Re-Direct Examination

By Mr. Cooper:

Q. From your observation, Mr. Wright, how long on the average does it take after an employee punches a time clock before he starts work?

Mr. Lamb: Objection. He can't testify as to that.

The Master: I think he may be able to.

Mr. Lamb: It is what happened here that we are interested in.

The Master: There is a dispute in this case as to what happened. What happens generally may have some weight in deciding that dispute. I will take his answer.

A. Depending upon how far they have to go after they have punched the clock to their place of employment or their place of work; and, of course, depending upon what the nature of the work is. I would say out of my experience I have seen men that would punch a clock 12 minutes before starting time, go in and congregate around in groups all around their immediate place of work, some will even oil their machinery; others will go to the stockroom and pick up tools and equipment that they use in their ordinary line of work before they go to their place of work.

It has been my observation that men like to go in and congregate around their place of work for a few moments before starting work. And that, perhaps, is the reason for the answer to counsel that it was an impossibility for

a man to start work one minute after they punch the time clock. I have never seen it yet.

The Master: What do you say is the minimum you have observed?

A. Oh, anywhere from 6 to 8 minutes. We figure at a plant a man that punches the time clock at five minutes of don't get started at the starting time.

The Master: Suppose the man is a regular early-riser on a 7 o'clock shift and is usually there 14 minutes of the hour and happens to be late and gets there at one minute to 7:00, do you say it is impossible for him to rush over there and start work on time?

A. Absolutely impossible. It just isn't in the cards.

The Master: Supposing he was very conscientious and was very disappointed, because of some accident that happened he was unable to get there in the morning until a minute before work, so that he made every effort possible to get to work when the whistle blew.

A. I don't think it would be possible. Honestly, I don't. Even if he only had to walk across the room to go to work; because it takes a second to open his toolbox, take his tools out; he may want to change his shoes, get gloves out of a drawer he has them in; he may want to get something he works with. That all takes time to do. It just isn't in the cards.

Q. (By Mr. Lamb) Don't you consider a man who is getting his tools sharpened or in shape at that time, that time working?

A. No.

Mr. Cooper: Objection. That is a question of law.

The Master: Well, I will let it stand.

Let me ask you this, do I understand you to say that—I don't know that you testified directly on it at all, but I can imagine what your testimony will be from other testimony you have given—is the work of an employee or the activity of an employee in cleaning up at the end of the day's work, usually on the employee's time or on the employer's time?

A. That is, you mean cleaning his person?

The Master: Cleaning his person, yes.

A. That is his own time.

The Master: Are you familiar with the conditions at the Hudson Naval Arsenal plant?

A. No, not very well.

The Master: In the Hudson Motor Car Company?

A. In the Hudson Motor Car Company, yes. They stay at their bench until quitting time, and then clean up afterwards. No plant permits cleaning up prior to whistle time, because, let's look at the thought. You need discipline in the plant. If you are going to permit them to take five minutes off, tomorrow it will be 10, and the next day it is 15 minutes, and you have to have a rule, and you can't deviate from that rule.

Q. (By Mr. Lamb) You mean oiling machinery and cleaning it up?

A. No, we are talking about cleaning the person.

Q. That is all done on the employee's time?

A. Not always. We were talking about—

The Master: I was asking about cleaning up the person, washing off the grime.

Q. (By Mr. Lamb) You said, I think, that in some plants employees do prepare themselves for work on their own time before punching the time clock, and in some plants that is not true?

A. Yes.

Q. And you are not familiar with which practice is followed in the Mt. Clemens plant?

A. I am not a bit acquainted with the Mt. Clemens procedure.

Mr. Lamb: That is all. • • •

CHARLES E. DOLL, JR., was thereupon recalled as a witness, and being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Cooper:

Q. I hand you, Mr. Doll, what has been marked for identification as Exhibit 93, 93-A through 93-Y, and ask you if you can state what those documents are?

A. Exhibit 93 to 93-Y are the time cards of Floyd Pearl from the pay ending January 9, 1940, to December 31, 1940.

Q. What department did he work in during that period?

A. Floyd Pearl worked in the glost belt system.

Q. I show you what has been marked for identification as Exhibit 94, 94-A through 94-Z, and ask you to identify those documents (handing exhibits to witness)?

A. Exhibit 94 to 94-Z are the time cards of Harry Lozen for the pay ending January 9, 1940, to the pay ending December 31, 1940.

Q. And I show you what has been marked as Exhibit 95 and 95-A through 95-P and ask you if you can identify them (handing exhibits to witness)?

A. Exhibits 95 to 95-P are the time cards of George Leibziet.

Q. And is there—

The Master: Pardon me. What pay periods?

A. Pay period from September 10, 1940, to April 8, 1941.

The Master: Did he just begin work there during—do you know, on September 10, 1940

Mr. Cooper: Perhaps I could clear that up, your Honor.

The Master: All right.

Q. (By Mr. Cooper) Is there any indication, or can you state from your examination of the record, Mr. Doll, as to when Mr. Leibziet became employed by the company?

A. George Leibziet went to work for the company in September, 1940.

Q. And can you state what department he was employed in in September, 1940?

A. He went to work in the clay department.

Q. Can you state or ascertain whether he subsequently became employed in the glost belt department?

A. These time cards show that he went to work in the glost belt department for the pay ending January 14, 1941.

Q. I don't believe I asked you what department Harry Lozen was employed in during the year 1940?

A. In the glost belt department.

The Master: Is that all?

Mr. Cooper: Yes, that is all. We produced him for Mr. Lamb's examination at his request, and we have had him identify these exhibits.

Mr. Lamb: And the ones of Nick Dacko were identified before.

Mr. Cooper: Yes.

The Master: Does either side want to offer these exhibits, or do you want to use them in a subsequent examination?

Mr. Nunneley: Mr. Lamb asked for them.

Mr. Lamb: Yes, I am perfectly willing to.

The Master: Any objection?

Mr. Nunneley: No.

Mr. Cooper: Has he offered them? No objection.

The Master: I will admit them. Let me ask this one question.

Do you have the hand punch type of time clock or the electric type in the plant?

A. At the period of this action we had electric clocks but of the lever type.

The Master: You mean that the employee had to punch or push a lever with his hand in order to operate the time clock?

A. After inserting the card in the clock he pushes a lever.

The Master: The electric part simply had to do with the mechanism of the clock?

A. That is correct. Motor-operated. . . .

June 25, 1942

JAMES RANDOLPH DOLL, was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. What is your address, Mr. Doll?

A. 207 Moross Avenue, Mt. Clemens.

Q. Are you employed by the Mt. Clemens Pottery Company?

A. Yes.

Q. In what capacity?

A. At the present time I am Personnel Director and in charge of the orders, and the shipping department, also.

Q. How long have you held that position?

A. Personnel Director since May, 1941.

Q. And what was your position there during the period from October, 1938, up until April of 1941?

A. I was in charge of the orders and the shipping department, and I arranged what types of ware were to be

made on the basis of the orders, and what was to be done with the ware as it came through the plant, how it was to be decorated and what colors it was to be dipped in, and so forth.

Q. How long have you been connected with the pottery company, Mr. Doll?

A. Since 1927.

Q. Are you related to Mr. Charles E. Doll, Sr.?

A. Yes, I am his son.

Q. Mr. Doll, in connection with your work, are you familiar with the time clock records of the Mt. Clemens Pottery Company?

A. Well, prior to May of 1941 I had practically nothing to do with them, but I have familiarized myself with the records of that period subsequent to that time.

Q. What records, if any, of the company would show how many individuals punched in during a particular 14-minute period on any day?

A. The cards themselves would show that.

Q. Now, how, if at all, is it possible to ascertain the particular minute during such a 14-minute period when each individual punched in?

A. That will show on the card.

Q. How, if at all, can it be determined whether all the individuals punching in during a particular 14-minute period used the same time clock?

A. By the number; by the card number.

The Master: Can you tell from these time clock cards the department in which the individual worked?

A. No, not directly.

Q. (By Mr. Cooper) Have you made any studies or analyses of the time clock records of the Mt. Clemens Pottery Company during the period involved in this action?

A. Yes. I have gone through some of the cards.

Q. In that connection, Mr. Doll, I show you what has been marked as Defendant's Exhibits 97, 98 and 99, and ask you to identify those, if you can; state who made

them, and explain to the Court, if you know, how they were prepared (handing exhibits to witness).

A. Well, these are the results of some of the studies that I made of the time cards, and they show the number of people that rang in on a clock during a given minute on a certain day. And, the information is shown right on the sheet. * * * *

The Master: How did you pick the shifts on which you were going to make your tabulation?

A. The shifts?

The Master: Well, the shifts and the date?

A. Well, there wasn't any particular reason for picking the shift. I took a time in which there would be a fair number of people going in at one time, and as far as the dates go you will notice that there are time clock cards available, the earliest ones are in November of '39, and I have one there, and then I took one which came in January of '41, which would be a much later period, and then this one (indicating) is somewhat in between.

The Master: Are these the only computations of this sort you made for these 3 days, or did you make them for a large number of days and pick these three out?

A. No. It takes quite a while to do it, and the time is limited, and I prepared these.

The Master: And none others?

A. That is right.

The Master: Did you select the dates just arbitrarily, or did you have some reason for selecting them?

A. Well, as far as the particular day in this given month is concerned it was a question, the location of the ring on the card was a convenient place to pick them out.

The Master: Did you go through all the time clock cards for each of these days? Does this include the whole plant or include certain departments?

A. It includes all on that particular clock.

The Master: Which clock is that? * * *

A. Well, this would be time clock B, then.

The Master: The south clock?

A. Yes.

The Master: There were two clocks at that point during the date covered by one of these—no.

A. No, I don't believe so. • • •

Q. (By Mr. Cooper) I think you spoke in answer to one of the Master's questions, Mr. Doll, of the location of the ring-in having something to do with the dates that you have. Was that the phrase that you used?

A. (No response.)

Q. If I understood you correctly, I thought you could explain, perhaps, what that phrase would mean.

A. I don't recall the statement that I made.

The Master: What you said was, I asked you how you happened to select these particular dates, and you said that you selected certain months, and then as to the date in the month, you determined that by getting a convenient—or a date that had a convenient position on the time clock card, as to the time rung in in the morning, so you could readily read it.

A. Well, yes. In the case of two of these, it was the top line, and I took that so that if I took a line down further on the card, I might become confused in going through so many. And the other one, on January 3 it was further down on the card because they started in an odd time on the card anyway; the first of the year ring didn't come at the top of the card, and so I just took one that suited my convenience.

The Master: That is January 3, 1941, you are referring to?

A. Yes.

Q. (By Mr. Cooper) Can you state, Mr. Doll, the meaning of the figures in the left-hand column on each of these exhibits 97, 98 and 99?

A. That is the minute, or the time.

Q. For example, 6:46 means 6:46 A.M., is that right?

A. Yes.

Q. And is that true of each of the exhibits?

A. Yes.

Q. 97, 98 and 99?

A. Yes.

Q. Then I notice in the center of the page of each of those exhibits there are character lines set up in groups of five. Could you explain what those mean?

A. Each one of the lines represents a ring by an individual employee.

Q. And the right-hand column of each table is headed, "Total," and under that column opposite each minute period there is a figure. Could you state what those figures represent?

A. That figure is the total number of marks on that same line, which result would be the total number of employees that rang in that minute.

Q. And what is represented by the total figure of that column?

A. That is the total number of employees that rang in during the 15-minute period shown.

Q. Now, do you know whether or not all of the employees whose ring-ins are indicated on each of those tables used the same time clock?

A. Yes.

Q. Do you know whether or not there were any other employees who used that time clock during that 14-minute period on the respective days?

A. I went through all the cards for that—that would be covered by that clock and took every ring that was on there, and I don't know of any that would be rung that I wouldn't have gotten.

Q. Did the cards include the cards both of those who signed the designation or are named in the suit, and the cards of all the other employees in the plant?

A. Yes.

Q. And, if you remember, approximately how many cards were there in each of the three packs you examined?

A. Well, I didn't count them, but from the size of the pack, I would judge that there were 450 to 475.

Q. Now, do you know some of the departments that would be represented by the punch-ins indicated on those tabulations?

A. That would be the brushing and the dipping, and all of the glost belt, the glost ware room, and packing.

Q. Then, to sort of sum it up, can you state, sir, whether or not each of those exhibits shows the number of persons punching in at the same time clock at each minute during the 14-minute period indicated for the days indicated?

A. Yes.

Q. And I am not sure whether you stated on the record the dates of the three exhibits?

A. The first is November 8, 1939; July 17, 1940; January 3, 1941.

Q. Did you prepare those exhibits in response to anyone's request?

A. Yes, I prepared them in response to your request; Mr. Cooper's request.

Q. And what was my request of you?

A. You requested that I go through some of the time cards, and prepare a table showing the number of people that rang in during a given period of time.

Q. What instructions, if any, did I give you as to the dates to be used?

A. None whatever.

Mr. Cooper: If the Court please, I offer the exhibits which have been marked as Exhibits 97, 98 and 99, being tabulations of very voluminous records, which have been prepared in the manner that has been quite fully testified to by the witness. • • •

The Master: Well, I will admit the exhibits.

Mr. Lamb: I don't think they are material at all. • • •

Q. (By Mr. Cooper) Do you know, Mr. Doll, whether or not there are in the plant of the Mt. Clemens Pottery Company certain employees known as kiln firemen?

A. Yes.

Q. Is it their job to get the cars of ware through the kilns?

A. Primarily, yes, I would say.

Q. Are you familiar, Mr. Doll, with the basis upon which the kiln firemen were compensated during the period involved in this action?

A. Yes. I have made it my business to determine and find out how they were compensated.

Q. Now, can you describe to the Court in a general way what the basis of their compensation was?

A. They were paid at a given rate for each car that passed through the kilns, and, that is, that the entire group of kiln firemen were paid for a given number of cars that passed through the kilns, and the sum of money that the group earned was divided among the kiln firemen in proportion to the number of hours that each man worked during the pay period.

Q. Whether or not, if you know, the compensation of the kiln firemen depended in any way on the number of cars which his crew put through the kilns during his 8-hour shift?

A. No, it didn't matter. It was entirely dependent upon how many the group as a whole handled in a pay period, and then it was divided among the men the proportionate number of hours they worked.

Q. How many hours a day, do you know, did this department or division comprising the kiln firemen, operate?

Mr. Lamb: Objection.

The Master: Overruled.

A. It is a continuous operation; 24 hours a day, 7 days a week.

Q. How many shifts a day?

A. 3 shifts.

Q. How many men would there be on each shift?

A. Four.

Q. Now, Mr. Doll, have you made any study of the time clock cards of the kiln firemen?

A. Yes, I have.

Q. I show you what has been marked for identification as Exhibit 100 and 100-A and ask you in the first

place whether or not you recognize that (handing documents to the witness)?

A. Yes, I prepared the figures for these exhibits.

Q. And can you describe to the Court the several columns in this exhibit, explaining how the exhibit was prepared by you and was shown by the various columns which you have set forth?

A. Each of these exhibits covers a full pay period. The dates are shown in the right-hand column. The first column indicates the time that the four men on the shift rang in. The second column shows the starting time of that shift. The third column shows the time the shift ended, and the fourth column shows the time that the four men punched out.

Q. Is that the same time for all of the four men, or is it different times that each of the four men punched out?

A. Each figure represents the time of one man; in other words, there were three men that punched in at 10:55 and one at 10:47. • • •

A. The fifth column shows the time that the four firemen on the next shift rang in.

The next column shows the starting time of that shift.

The next column shows the time the shift ended.

The next column shows the time that the four firemen rang out.

The next column—

Q. I wonder if, for the purpose of the record, the columns could be numbered, as you go across, describing just from here on; I think you have numbered several of them?

A. The 9th column shows the time that the four firemen on the next shift rang in.

The 10th column shows the starting time of that shift.

The 11th column shows the stopping time of the shift.

The 12th column shows the time that the four firemen rang out.

Q. And how does the general character of the top sheet, marked Exhibit 100, compare with the general outline of the second sheet, marked Exhibit 100-A?

A. Why, it is the same except on the one marked 100, that time of day was started with the 11 o'clock shift, and the one marked 100-A the day was starting with the 7 o'clock shift.

Q. On Exhbiit 100, in column 2, under the title, "Shift began," there appears the figure 11. Is that 11 A. M. or 11 P. M.?

A. That is 11 P. M. of the date preceding the date in the right-hand column.

Q. And the figure appearing under the 3rd column, headed, "Shift ended" is 7. Is that 7 A. M. or 7 P. M.?

A. That is 7 A. M. of the day shown in the right-hand column.

Q. In this case, November 28, 1939?

A. Yes, that is right.

Q. And in column 6 the first figure under the heading, "Shift began," is 7?

A. 7 A. M.

Q. And in the next column, the first figure under the title, "Shift ended" is 3?

A. 3 P. M.

Q. And in column 10 under the heading, "Shift began," the first figure appearing is 3?

A. 3 P. M.

Q. And the next column under the heading "Shift ended," appears the figure 11?

A. 11 P. M.

Q. And all of those hours, except for the 11 P. M. in column 2, are hours under date of November 28, 1939, is that right?

A. That is right.

The Master: Do these four firemen constitute one crew, as you call it?

A. Yes.

The Master: And they work on one kiln?

A. No, there are four kilns.

The Master: There are four kilns?

A. Yes.

The Master: One fireman to each kiln?

A. That is right.

Q. (By Mr. Cooper) Does that tabulation—and this will clear it up—include all of the clock cards for that work for the period covered by the tabulation?

A. Yes.

Q. I think you testified as to who prepared it?

A. I prepared it.

Q. And from what it was prepared?

A. It was prepared from the clock cards. • • •

Mr. Cooper: I offer, if the Court please, Exhibits 100 and 100-A.

Mr. Lamb: Was there any particular reason for the choice of the dates that are mentioned on Exhibits 100 and 100-A?

A. One is at the beginning of some of the oldest cards we had, and the other one is some of the last time cards we had.

Mr. Lamb: Do I understand that this covers all of the group of four men—

Mr. Nunneley: I can't hear the question.

Mr. Lamb: Excuse me. Do I understand that these two exhibits cover the time clock records of all of the four men in the kiln—who operate as kiln firemen?

A. It covers all of the records for kiln firemen. There would be more than four men, because there were three shifts. There were only four men on at one time. • • •

Mr. Lamb: In other words, it takes care of all of the kiln firemen for the pay period?

A. That is right.

Mr. Lamb: On all shifts?

A. That is right.

The Master: And that is a two weeks period, of course?

A. Yes, sir.

Mr. Lamb: Did you break it down into the workweek?

A. It is there by days, the table is; prepared by days.

Mr. Lamb: In other words, you have taken each day of a two-week period, is that correct?

A. That is right.

The Master: You can't tell from your exhibits here which of the firemen were working at the bisque kilns and which were working at the glost kilns?

A. No, you can't, Mr. Quaife.

The Master: Let's see, those working at the bisque kilns and the glost kilns, do they both come in at the north time clock?

A. South.

The Master: At the south time clock. They both came in at the same time clock?

A. Yes.

The Master: But the bisque kilns are considerably farther distant from the south time clock than the glost kilns?

A. Yes.

The Master: Any further questions?

Mr. Lamb: I want the record to show an objection.

• • •

The Master: Well, I will admit it for whatever it is worth. I would like to ask the witness, I notice that on the last column here there are a number of instances, or at least several instances where the employee punched out at 7 o'clock, and the shift ended at 7 o'clock. Can you account for that fact, how the employee was able to punch out the exact minute that the shift ended?

A. Well, any statement that I might make on it would be a supposition, not being present at the time.

The Master: Well, based upon your observation, you have observed the operation of the change in shifts subsequent to the time of this suit.

A. Yes.

The Master: Based upon that observation, can you account for that?

A. Well, the glost kilns are quite close to the time clock, and it would be possible for an employee, if he was all ready to leave, to be there before the minute was up when the shift ended.

The Master: Do you know whether there was a whistle blowing at 7 o'clock during this period, that is, 7 o'clock in the evening?

A. This is 7 in the morning, Mr. Quaife.

The Master: Oh, this is 7 in the morning?

A. Yes.

The Master: I beg your pardon. There was a whistle blowing at 7 in the morning?

A. Yes. • • •

Mr. Cooper: Would the Court permit the placing of the appropriate designation, either A. M. or P. M., after the first figure in the second column on each exhibit?

The Master: I think so. You can write it in in pen.

(The witness thereupon marked upon the exhibits.)

Q. (By Mr. Cooper) Mr. Doll, are you familiar with the basis on which the pressmen in the slip house are compensated?

A. Yes. I know how they are compensated.

Q. Describe the method on which their pay is computed?

A. The group is paid at a rate per dozen for the ware produced in the clay shop, and the money is divided among the group in proportion to the number of shifts each man has worked.

Q. Do you know how that particular method came to be adopted?

A. At the request of the men.

The Master: You have personal knowledge of that?

A. Yes.

Q. (By Mr. Cooper) Is that another 24-hour operation, Mr. Doll?

A. Yes. That is 24 hours for 5 days.

Q. And you spoke of groups. How many are there in the group in this category of pressmen in the slip house?

A. There are two pressmen on each shift.

Q. Under the basis of compensation that you have described, can you state whether or not the particular

number of hours and minutes that one of these members of a two-man crew in the slip-house has any relation to the amount that he earns for his day's work?

A. His pay was not directly related to the hours. It was directly related to the number of shifts that he worked.

Q. And, Mr. Doll, have you made a study or analysis of the time clock cards of the pressmen in the slip-house?

A. Yes, I have studied through some of those.

Q. And do the documents which have been marked for identification as Exhibits 101 and 101-A reflect the results of such study (handing documents to the witness)?

A. Yes.

Q. Can you describe, please, with reference to Exhibits 101 and 101-A, the method in which you prepared it and giving the headings of the four columns on each page and describing what is shown in each column?

A. The first column shows the dates. The second column indicates the time that the shift began, and the third column indicates the time the shift ended. The fourth column shows the time that one of the pressmen rang in. The fifth column shows the time the other one rang in. The sixth column shows the time that one of them rang out, and the seventh column shows the time that the other one rang out.

Q. And can you state, Mr. Doll, whether or not that computation covers all of the work of that type done in the plant during the periods involved?

A. Yes, it does.

Q. And, in general, can you say whether or not the method of preparation of it was similar to the method you employed in preparing Exhibit 100?

A. The figures were taken directly from the time cards.

Mr. Cooper: I offer in evidence, if the Court please, the documents marked Exhibits 101 and 101-A.

Mr. Lamb: Do I understand there are just two pressmen?

A. Yes.

Mr. Lamb: On a shift?

A. That is right, Mr. Lamb.

Mr. Lamb: And, therefore, how many pressmen do you have on three shifts in a 7-day week?

A. It is only a 5-day operation; it is 6 men.

Mr. Lamb: And as I understand it, the pay of these men is not based on the hours worked, but on the shifts they work?

A. That is right.

Mr. Lamb: What does a shift mean in that sense?

A. It is—if the men completed their work before the 8 hours had expired, their shift ended when they completed their work.

Mr. Lamb: And if it went over 8 hours they continued to work until the job was finished, is that it?

A. Yes, except that they couldn't work over the 8 hours because the other pressmen would be there ready to work and two crews couldn't be working at the same time.

Mr. Lamb: Are there ever occasions when they work 6 days a week?

Mr. Cooper: I think I will object to that question, if the Court please. It is a very broad one and it would include an examination of all the records covering the work of the pressmen in the slip-house over a period starting back in October, 1938.

The Master: No, he may know; he can state it; it is apparent that he is not now examining all of these records, he is asking him on the basis of his knowledge of the records. The witness can indicate the limitations of his knowledge.

A. Well, to my knowledge, they never did, but I wouldn't be positive.

The Master: You say that these two shifts can't both be working at the same time, there can't be overlapping?

A. No.

The Master: Is that based upon actual observation during this period of the change, the method used in changing shifts?

A. The two shifts couldn't be handling the same machinery at the same time.

Mr. Lamb: As I understand it, while you haven't personally observed it, it is possible that these pressmen in the slip-house could have worked 6 days in a workweek, could they not?

A. They could have worked 7, perhaps, if there had been occasion.

Mr. Lamb: What time clocks did they use?

A. They used the north "A."

Mr. Lamb: Well, on the basis on which you paid these men, assuming that they worked more than 40 hours, as I understand it, you state that these men are not paid on the basis of the hours worked, but were paid on the shift—

Mr. Cooper (Interposing): Are you finished with the question?

Mr. Lamb: No. And therefore it would be possible that these people would not be paid overtime?

A. Their cards—

Mr. Cooper (Interposing): I object to it, if the Court please. In the first place, the question is involved and I don't understand it. In the second place, I think it does not correctly state the testimony which the witness has given, and, of course, it goes 'way beyond the scope of direct examination, it is opening a subject matter that has nothing to do with identification of the table here.

Mr. Lamb: I am trying to find out if these particular exhibits are typical of others?

The Master: Read back the question.

(Question read.)

The Master: Frankly I have had that question in mind myself, and he was testifying as to the method of payment, and the question might not be stated so that the witness can understand it; if so, he can so indicate. I would like to know myself just how the company computed overtime for these men if they ever worked overtime, according to the company's method of computation.

A. Well, when the men actually were paid, a rate per

hour was computed based upon the number of hours that they worked, but the amount of money that they drew depended upon the number of shifts that they worked, so that you would find in the records that there was a rate per hour shown for the number of hours that they worked.

The Master: Do you know whether any of these men ever did work overtime according to the company's method of computation?

A. I don't know for sure whether they did or not.

The Master: If you don't know whether they did, you wouldn't know how they were paid if they did work overtime?

A. If they had worked overtime, they would have been paid for their overtime at the rate which would be computed by dividing their earnings by the number of hours shown on their time card. • • •

Q. (By Mr. Cooper) Suppose, for example, Mr. Doll, that during the course of a week the earnings of a pressman in the slip-house, computed on the basis you have described, was equivalent to $44, and assuming that the record of hours worked showed that that pressman had worked 44 hours during the week. Now, bearing in mind the annual earnings cards, a number of which have been introduced in evidence here, would a figure be written on the annual earnings card of that particular individual, indicating his hourly rate?

A. Of course his hourly rate would be $1 an hour.

Q. And if the record showed that during the work-week he had worked 44 hours at the regular rate shown, as you have described it, of $1, how much would he have been paid for the 44-hour week? • • •

A. I believe he would receive $1 an hour for 44 hours, and he would get 50 cents an hour for 4 hours.

Mr. Lamb: Well—.

Mr. Nunneley: Assuming it was a 40-hour week?

A. Yes, assuming it was a 40-hour week, I believe that would be $46. • • •

Mr. Cooper: Has the exhibit 101 been received?

Mr. Lamb: There is an objection to it.

The Master: I will admit it. Are you going through each one of these departments with a similar study? Is that the method you are following?

Mr. Cooper: Not all of them.

Q. (By Mr. Cooper) Do you have a group of employees in the plant known as boiler-firemen?

A. Yes.

Mr. Lamb: Boiler-firemen?

A. Yes.

Q. How many hours a day is that department in operation?

A. That is 24 hours a day.

Q. How many shifts a day?

A. Three.

Q. And how many individuals are employed on each of those three 8-hour shifts?

A. One on each shift.

Q. In any day you have three men each succeeding the other around the clock, is that right?

A. That is right.

Q. And is that department in operation 7 day a week?

A. For most of the year 7 days a week, warm weather they don't operate so much.

Q. Are you familiar with the basis on which the boiler-fireman is compensated?

A. They are paid a straight rate per hour.

Q. Do you know whether or not, Mr. Doll, the same crew of boiler-firemen have been on that job during the entire period involved in the suit?

A. No, there have been changes during the period involved in the suit.

Q. Did you examine the records and attempt to pick out periods of several months when you had the same crew on during a period of several months?

A. Yes.

Q. What period did you find that situation was true of?

A. From October of 1940 to April of 1941.

Q. Did you prepare the document which I handed to you and which has been marked for identification as Exhibit 102?

A. Yes. • • •

Q. (By Mr. Cooper) From what records did you prepare Exhibit 102?

A. I prepared that from the time cards of the men who were doing this work.

Q. And would you explain to the Court the method by which that was prepared, indicating the headings of the various columns and explaining what is shown in each column?

A. In this particular case we took one day from each card of the time in question, and this is the day (indicating), it happens to be the top line of the card, which we took for convenience, and the first column shows the time that the boiler-fireman rang his card, and the second column shows the time his shift started; the third column shows the time his shift ended, and the fourth column indicates the time that he rang out. The fifth column is the time that the succeeding fireman rang in; the sixth column the time his shift began; the seventh column the time his shift ended; the eighth column the time he rang out. The ninth column shows the time that the next fireman rang in, and the 10th column the time his shift began, and the 11th column the time his shift ended, and the 12th column the time that he rang out, and the last column the day.

Q. And in column 2, under the heading "Shift began," the first figure to appear is "7"; is that 7 A. M. or 7 P. M.?

A. 7 A. M.

The Master: Write that in so there will be no question about it.

(The witness then writes in with pen "A. M." or "P. M.")

Q. (By Mr. Cooper) And what, if anything, appears upon an examination of, for example, the figures appear-

ing in the 4th column headed "Punch out" after 3 P. M., and the figures appearing in the 5th column headed "Punch in" before 3 P. M.?

A. Well, that indicates or shows—the figures opposite show that there were 2 boiler firemen in the plant at the same time.

Q. And on what basis, if there was any basis, were the various dates appearing here between October 23, 1940, and April, 1941, selected?

A. They were the top lines of the cards, and it was a convenient line to take in making up the table.

Q. There would be then one entry from each pay?

A. One entry from each pay.

Mr. Cooper: I offer in evidence, if the Court please, Exhibit 102.

Mr. Lamb: How many boiler-firemen are there, three?

A. Well, it requires four men to handle it, because it is 7 days. • • •

The Master: Any further questions?

Mr. Lamb: No, just an objection.

The Master: Admitted. We will take a recess at this time.

(Recess.)

Q. (By Mr. Cooper) Did you have occasion, Mr. Doll, to make a study of the records of the Mt. Clemens Pottery Company to determine the total amount paid by Dorothy May for supplies purchased by her from the company during the period from October 25, 1938, through April 22, 1941?

A. Yes, I went through her records and noted the amounts that she purchased, of supplies.

Q. What records do you refer to?

A. The pay sheets, work sheets.

Q. And does Exhibit 78 reflect the results of that study which you made?

A. Yes, this Exhibit 78 shows the total deductions for supplies purchased by Dorothy May for the period specified.

Q. Have you checked the figures there against the figures appearing in the original books?

A. Yes.

Q. And approximately can you give the Court a general idea how many different pages or different entries had to be examined to determine the information appearing there?

A. There were 68.

Q. Did you at the same time make a check to ascertain the total amount of earnings of Dorothy May during the same period as covered on that Exhibit 78?

A. Yes.

Q. And can you state what the records show as to the total compensation received by Dorothy May from the Mt. Clemens Pottery Company during the period reflected on Exhibit 78? • • •

A. Her earnings during the period covered by the dates on Exhibit 78 were $2675.48.

Mr. Lamb: What dates are those? What period?

The Master: October 25, 1938, to April 22, 1941.

Q. (By Mr. Cooper) And what was the total amount paid by her for supplies during that period?

A. $6.34. • • •

The Master: Well, I don't think it matters. There has been an objection, and I will leave it off.

Mr. Cooper: I offer in evidence Exhibit 78.

The Master: Any objection?

(No response.)

The Master: It is admitted. • • •

Q. (By Mr. Cooper) Do you know, Mr. Doll, from your observation, whether or not on the annual earnings cards such as have been introduced in evidence here, there appear items showing payment of a certain sum of money to an individual on a certain date, but not showing opposite that sum of money any figure in the column headed "Total hours worked"? • • •

A. That figure, sum of money, represents amounts paid to employees for which there was no work performed.

The Master: What do you call that in the plant where there is some money paid in the summer time to the employees, and some money paid around Christmas time?

A. Yes.

The Master: How do you refer to those payments?

A. As extra compensation.

The Master: Is that the way they are referred to in the plant when you are discussing it with the employees, or publishing notices, or do you refer to the summer payments as vacation money?

A. The employees, perhaps, consider it as vacation money. It was given to them at the time of their vacations.

The Master: What about the Christmas money? How was that considered? Or, you must have had some common term you applied to it around the plant as to what they were getting, or did you just say to the employees that, "We are giving you this much extra compensation," without anything more?

A. At the end of the year it was referred to in that manner, yes, as extra compensation.

Q. (By Mr. Cooper) Do you know whether or not there was any agreement on the part of the company to make such payments?

A. There was no agreement that they would be paid, that they would always be paid. The only—at the end of the year it would be announced that it would be paid, and on each occasion it would be announced that they were going to be paid.

Q. Now, have you examined the records of the company with reference to the plaintiffs who have testified in the proceeding here, and determined by the process of addition, the total amounts of such extra compensation, for which no work was done, paid to each of the six or seven individuals who testified here?

Mr. Lamb: Objection. There is certainly an objection to that part of the question which says, "For which no work was done."

Mr. Cooper: That is the uncontradicted testimony

The Master: Re-phrase your question just to refer to his testimony that he has already given. • • •

Q. (By Mr. Cooper) Let me ask you, Mr. Doll, whether or not you examined the records of the Mt. Clemens Pottery Company reflecting payments made to the several individuals who testified here as witnesses for the plaintiffs—

The Master: Which you have designated extra compensation.

Q. (Continuing) —which you have designated extra compensation?

A. Yes. From their earnings cards, I have examined their earnings cards.

Q. And what did you find was the amount of payments made to Steve Anderson during the years 1938 and 1939 in the category which you have described as extra compensation?

A. You want 1940, also, don't you? You said 1938 and 1939.

Q. What years were included in your addition?

A. 1939 and 1940.

Q. 1938 and 1940?

A. Yes.

Q. Do you know, whether or not any such payments were made during the period from January through April of 1941?

A. No.

Q. Then the totals that you prepared cover the years 1939 and 1940?

A. They cover all the period of the suit.

Q. And would you state that total for Steve Anderson? • • •

A. $185.15.

Q. (By Mr. Cooper) And to shorten it, can you go through naming the several plaintiffs and the total amount paid each as extra compensation?

Mr. Lamb: Do I have it clear, is this for the year 1939 or '40 or from October 28, 1938; does this include 1938?

Mr. Cooper: I think he testified it included the period from October, 1938 to April, 1941.

The Master: Let's get it clear; does that include any payment paid during that time?

A. Yes.

The Master: No others?

A. No, sir. Earl Trombley, $91.99. John Metz, $167.31. Earl Larrimer, $153.81. Lillian Socia, $73.87. Eva Freddle, $62.13. Nicholas Dacko, $15.80.

Q. Have you made an examination of the time clock records of the company, Mr. Doll, to determine whether or not among the parties who are named in the designations in this cause, there are individuals who since November, 1941, have remained in the employ of the company? • • •

Mr. Lamb: Objection as immaterial.

The Master: I will take his answer.

A. Yes, I have.

Q. (By Mr. Cooper) Can you identify what has been marked for identification as Exhibit 96, 96-A through 96-SSSS, • • •

A. These are the cards of the individuals that are designated on the complaint who have been or are in our employ since November, 1941.

Mr. Cooper: Cross examine.

Mr. Lamb: As I understand it, you did not offer that list?

Mr. Cooper: No. • • •

Mr. Lamb: No cross examination. • • •

MACON CHARLES TRABUE, was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. What is your address, Mr. Trabue?
A. 47 Moross Avenue, Mt. Clemens, Michigan.
Q. And are you a ceramic engineer?
A. Yes, I am.
Q. Where were you trained?
A. At Ohio State University, Columbus, Ohio.
Q. With what company are you connected?
A. Mt. Clemens Pottery Company.
Q. How long have you been connected with that company?
A. Since 1929.
Q. What was your work when you were first hired out there?
A. I started in the laboratory as research and testing engineer.
Q. Were you connected with the company during the period from October, 1938, until April, 1941?
A. Yes, I was.
Q. What was your position with the company during that period?
A. That is 1938 to 1941?
Q. Yes, sir.
A. Foreman of the decorating department.
Mr. Cooper: For the record, all of my questions now, unless the contrary is indicated, will be directed to the period prior to the filing of this suit in April, 1941.
Q. During this period covered by this suit, Mr. Trabue, was there any regular starting time in the decorating department?

A. Yes, there was.

Q. What was that?

A. The starting time was 7:15 in the morning, with the exception of a couple of times when employees requested to start at an earlier time so they would get through earlier in the afternoon, which was granted, and at the end of the summer we went back to the 7:15 starting time.

Q. You say in the summer there might be a variation?

A. That is right. When the days were longer and they wanted a longer evening.

Q. Now, during this period when you were foreman of the decorating department, what time would you usually arrive at the plant in the morning?

A. I would usually get there between 6:30 and a quarter to 7:00.

Q. And what would you do after you got there?

A. Well, the first thing I would do in the department would be to get the materials ready that the employees would be using, such as the gold, and the varnish, and see that the department was in order, and then I would go to my desk and start on the record work that I was keeping at the time.

Q. About how long did it take you on the average to get those materials, such as gold and varnish?

A. Well, if I was in a hurry it would be a few seconds.

Q. And then ordinarily by 7 o'clock where would you ordinarily be?

A. I would be at the desk in the department.

Q. Where would you ordinarily be during the period from 7 to a quarter after?

A. I would be at the desk during that period. Usually at the desk.

Q. Whereabouts in the department is the desk located? I suggest that I show the witness Exhibit 30-A. (Handing exhibit to the witness). Can you point out, Mr. Trabue, on Exhibit 30-A, which has been identified as a plat of the company, approximately where within this area marked decorating department your desk would be located?

A. The decorating kilns—are they listed here? I believe this is them, isn't it (indicating)?

The Master: I think so.

A. I think these are the two decal machines, right in here next to the decal machine.

The Master: Get it for the record. Identify it.

Q. (By Mr. Cooper) For the record, it would be almost immediately under the two rectangular marks which appear on the plat immediately to the left of or in front of the letter D in the word "decorating," is that right?

A. Well, it would be quite a ways from that. It would be right in back of the—I would say the west mangle, the west decorating mangle.

The Master: What did you call these, decorating mangles?

A. Yes, that is right.

The Master: These rectangular objects just to the left of the word "decorating" on the map, then, are the mangles?

A. That is right.

The Master: And you say it is just to the—

A. (Interrupting) Just in back of this one.

The Master: In back of the left mangle, and by in back of it, you mean it is directly below it on the map?

A. That is right.

Q. And where, with reference to the position of your desk, would the various girls employed in the decorating department be when they were working at their benches?

A. Well, they would be both to the east and west of the desk, the full length of the department.

Q. And where would you ordinarily be sitting during this period from 7 to 7:15?

A. At that desk.

Q. Now, on the basis of your observations, Mr. Trabue, can you state with reference to the usual starting time in the decorating department when the girls there employed would begin to come into the department?

Mr. Lamb: Objection.

The Master: Overruled. Go ahead.

Mr. Cooper: You may answer.

A. Oh, I would say that they would start coming in perhaps 10 minutes before starting time.

Q. And again on the basis of your observation when with reference to the starting time would the whole department usually be there?

Mr. Lamb: Objection.

The Master: Overruled. You may answer.

A. The whole department, I would say, would be—the average would be there at the starting time, although there would be some of them would be still going to their bench at the starting time.

Q. (By Mr. Cooper) Mr. Trabue, can you state on the basis of your observations when, with reference to the regular starting time, production work would start?

Mr. Lamb: Objection.

Q. In the decorating department.

Mr. Lamb: Objection.

The Master: He may answer.

A. Why, production work would start, on the average, at the starting time.

Q. What was your observation if any, as to when, with reference to the regular starting time all of the girls would be at work?

Mr. Lamb: Objection.

The Master: Overruled.

A. Some of the girls would be coming in the department after the starting time.

The Master: You mean as a regular matter every day?

A. Yes, there would be some of them straggling in every day.

Q. What announcement, if any at all, was made as to the arrival at the starting time?

A. Well, all that I ever made to any of them was that they were required to be there at the starting time.

Q. Was any announcement made as to when 7:15 would come; a whistle would blow or anything else?

A. No, there was no whistle blown. At 7:15 I would get up from my desk and make the rounds of the depart-

ments, see that the people were at their particular working place, and those that were not, tell them that it was starting time and to go to work.

The Master: How did the ones that you didn't tell, know when the starting time had arrived?

A. They would see me going around through the department, and a good many of the girls had clocks around in the department that they would set by my clock at the desk.

The Master: Were there any company clocks overhead that could be seen around the department?

A. Not in the department.

Q. (By Mr. Cooper) Now, what is the nature of the operations performed in this decorating department, Mr. Trabue?

A. Well, the operations in the decorating department are decorating dishes. Do you want me to go into a discussion of the operations?

Q. Briefly, I wish you would outline the nature of the jobs. There were two chief jobs, to get this started, were there not; the decal girls and the liners?

A. Yes. They were both in the same department. The Decal girls would take the undecorated piece of ware; they would apply a varnish coat; allow this varnish coat to dry; and then they would apply the decal spray, and they would rub this spray into the varnish coat; and then they would dip this piece of ware in water to remove the paper, the back of the paper on the decal spray, and then they would take the piece of ware and put it on a rack to dry. It was allowed to dry overnight, and the next day the liners would go to this particular rack, take the piece of ware from the rack, apply their gold to the edges, stilt up the piece of ware and put it in kiln boxes.

Q. Can you on the basis of your own observations, describe the activities of the girls in the decorating department between the time they would arrive in the department in the morning, and the regular starting time?

Mr. Lamb: Objection, unless he identifies the girl and the date that he is referring to.

The Master: Read that question back.

(Question read.) • • •

The Master: Overruled.

A. Well, there was no order to their activity. As girls will be, they spent a good bit of time congregating and talking. They spent time preparing themselves for work.

Mr. Lamb: I submit this is entirely wrong. • • •

A. Some of them would go to their benches, while others would congregate. Then when I went around at 7:15, they did go to their benches, and at that time everybody went to work.

Q. (By Mr. Cooper) Now, what materials or supplies, if any, were required by girls doing decal work?

A. Materials would be the varnish that they used and the decal sprays that they used.

Q. Where would a girl get the varnish?

A. The varnish was returned every night—their location would be in between these two decal spraying machines—and every morning they would go there and fill their particular container with this varnish.

Q. Can you say whether or not the decal sprays that you spoke of were something like this paper which has been marked as Exhibit No. 61?

A. Yes, those are sprays of one pattern.

Q. And where did the girls keep the sprays?

A. They kept the sprays with their work at their bench one day in advance. Tomorrow's work, they would keep there tonight.

Q. Well, then, what, if anything would a girl doing decal work have to do after arriving in the department before she could begin production?

A. Well, before she could actually begin production, she would have to put her apron on, if she wore one—and most of them did. I believe—and she would have to go and fill her container with varnish, she would have to take ware to her bench, take her varnish brush and clean it out, and then she would be ready to start work.

Q. What has been your observation as to whether or not there was any uniform practice with reference to the place where the girls' ware would be?

Mr. Lamb: Objection.

The Master: Overruled. You may answer.

A. The ware that they might be doing would be—it would be various places in the department. We tried to work the girls as close to the source as we could. It would be necessary for her to go to the various places in the department to get this ware.

Q. Would there be any uniformity in the situation as to whether or not in the morning a girl would have to go and get ware or would the question as to whether or not a girl had to go and get ware vary between different girls and different days?

A. You say the position that they—

The Master: Would the girls have to go and get ware in the morning before starting work?

A. Yes, the majority of them would. Occasionally, if they were on the same item two days together, they might have some left from the day before. As a rule they had to get it in the morning unless they had some left.

Q. (By Mr. Cooper) Now, what is your observation, Mr. Trabue, as to the time it actually took the girl to get her varnish and get her ware and get to work?

Mr. Lamb: Objection, unless the date is specified.

The Master: Overruled.

A. Why, a girl could do this, like I mentioned—I could get any material I could to do it in a matter of a few seconds, if they saw fit to do so.

The Master: How long do you figure? Did you ever observe the girls passing from the time clocks to the decorating department or were you always in the decorating department?

A. Well, I can't recall any specific instance, but I have been past the clock. I don't know just when, and they haven't been coming in yet.

The Master: How long do you estimate that it took them to come from the time clocks after punching in, to come to the place where they were working in the department?

A. Oh, I would estimate it, a matter of a few seconds or minutes. Perhaps two or three minutes.

Q. (By Mr. Cooper) Now, Mr. Trabue, were there any preparatory operations which the liners were required to do before they could begin actual work?

A. Yes, the liners' material, which was liquid gold, was returned every night. It would be necessary for them to pick that up at my desk every morning. And at their bench it was necessary for them to get their lining brushes in working order. By that I mean they kept their brushes in a bottle at night, with a small amount of turpentine to keep the brush soft. In the morning they would have to work the brush to soften it up, and to get the bristles working all right. After they poured their gold in their bowl, it would be necessary to work it to get the proper working mixture.

Q. How long as to your observation as to the length of time required to do that?

A. A person who kept their equipment in good order could do that in a few seconds, too, I believe.

The Master: What do you mean by a few seconds? Give your best estimate.

A. I would say on the way past the desk, they picked up their gold and their brushes, they could do it all in a minute.

The Master: In a minute?

A. Yes, I would say so.

Q. (By Mr. Cooper) And what else—

The Master: Were they supposed to do that before 7:15 rolled around?

A. No, they just had to be at their bench doing that.

The Master: Do you know whether they did do it in the department before 7:15 came, in most instances?

A. In most instances, no. I have seen some of them get their brush ready before, yes.

The Master: Go ahead.

Q. (By Mr. Cooper) Then after work got started, Mr. Trabue, what is your observation as to how steadily the girls kept working during the morning?

A. Well, we had a great number of girls in the department. They were working quite close. I never tried to

control that beyond a certain degree, because of the fact that it was necessary, as I said, to go various places in the department for ware, and unless there was an unusual amount of it, there was no objection to them stopping and and talking.

Mr. Lamb: What was that material they picked up on the desk, gold something?

A. Liquid gold.

Mr. Lamb: Liquid gold?

A That is right.

The Master: Was that used in making a gold ring around the plates?

A. That is right. They paint them on and then it burns gold.

Q. (By Mr. Cooper) On the basis of your observation again, Mr. Trabue, can you state when with reference to the quitting time production operations would cease?

Mr. Lamb: Objection.

The Master: Overruled.

A. Well, production operations would cease at quitting time. Some of the decal girls, where it was necessary to cut print, would perhaps finish up a little before quitting time. They tried to govern their work so they got through at quitting time.

Q. (By Mr. Cooper) What was your observation, if any, as to girls working after the regular quitting time?

A. Most of them would be through at quitting time, some before. I have seen a good many of them in the department waiting for quitting time, and I have seen them waiting at the clock to go through, pass the clock to punch out.

The Master: Were there some that continued after quitting time?

A. There again I would say the same as I said on starting. I have seen them perhaps finish up a piece of ware, or putting their brushes away after quitting time, yes.

Q. (By Mr. Cooper) Did you attend foremen's meetings, Mr. Trabue?

A. Yes, I did.

Q. How frequently were they held?

A. Every Tuesday noon.

Q. Who would attend?

A. All foremen attended the meetings.

Q. Would Mr. Charles E. Doll, Senior, be there?

A. Yes, he would be in charge of the meeting.

Q. Would there be any discussion at those meetings as to the wage and hour law?

A. Yes, there have been many discussions on that.

Q. Did you ever hear Mr. Doll say anything about the wage and hour law at those foremen's meetings?

A. Yes.

Q. And what did you hear him say?

A. Well, he instructed us that our employees were not to work more than 40 hours in any one week, and that the minimum rate paid an employee was explained to us.

Q. How long was that 40-hour week followed?

A. Well, it was followed immediately after the law became effective, and has been followed ever since.

Q. Was the decorating department formerly on a longer week or was it always on a 40-hour week?

A. No, we were on a 44-hour one at one time, and according to the law, we were cut to the 42, and then to the 40.

Q. Are you familiar, Mr. Trabue, with the method under which the company computes the number of hours of work as recorded on the right-hand side of these time clock cards?

A. Yes, I am.

Q. Can you state on the basis of your observation of the girls in the decorating department, how that computation of hours worked compares with the hours actually worked by the girls?

Mr. Lamb: Objection.

The Master: He may answer.

A. Well, my other statements about girls going to various places in the department, and about the visiting that I did allow to go on, I would say that the actual

hours computed—that the girls actually works less than the actual hours computed by the company.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Did you ever give any instructions to the girls in the decorating department as to when they should punch in at the time clock in the morning?

A. I gave them instructions that they should be in the department at starting time, and I have also told them that they could not come past the time clock until 14 minutes before that starting time.

Q. Was any other mention of 14 minutes before starting time made in any instructions that you might have given these girls?

A. Not that I made, except that they couldn't come past the clock until that time.

The Master: Did you tell them they should punch in the clock by 7:15, or did you tell them that they should be at the department at their place of work by 7:15?

A. I told them they should be in the department ready and at their bench at 7:15; in the department at their bench. • • •

Q. (By Mr. Cooper) Can you advise the Court, Mr. Trabue, as to whether or not you had any regular practice as to making a statement to new employees as they were hired, with reference to the basis of their compensation.

Mr. Lamb: Objection. I think—

The Master: Did you have any regular practice? I will find out whether he had one, and then pass on it. Just yes or no.

A. Yes, I did have.

Mr. Cooper: Now, if the Court please, I think that if Mr. Trabue testifies that the new girl was hired, and went to work, that it was his regular practice, as he has said, to explain to her the basis on which she was being hired, he certainly is competent to testify as to what his practice was.

The Master: I think so. If there is something that is repeated over and over again over the two-year period, he won't have to designate each time that he talked with the girl, and the date, and the name of the girl.

Mr. Lamb: Objection.

The Master: You may answer.

A. Will you read that question again, please?

The Master: The question is now as to what your regular practice was with reference to instructing the girls?

A. As a new girl was brought into the department, she was brought to the desk, and I sat down with her and talked her work day over, and the amount of compensation she was getting; I would tell her she would start in the morning at 7:15, and her earnings—I told her she would be paid by the hour up until such a time that she would earn more than her regular piece rate. It was explained to her she was paid the same piece rate as other employees in the department. During this apprenticeship period where she could learn to do this work she could earn more than that. She was very carefully instructed she would not earn less than 30 cents an hour with a possibility of earning more on piece rate.

Q. Would any question ever come up about the furnishing of supplies and brushes, and other supplies that were used? • • •

A. I will give each one of them a set of equipment, the equipment they would be using, and instruct them that after, or any further equipment or materials needed, why, they would be, or they would have to furnish them themselves.

The Master: Did you always do that?

A. Yes. They were given one complete set of everything that they used. But we didn't furnish them any more than that. • • •

Q. (By Mr. Cooper) Do you know, Mr. Trabue, where the girls in the decorating department bought these materials and supplies?

A. Most of the materials and supplies were bought from the company. However, a good many of them brought materials in from other sources.

Q. Have you ever had occasion to make observation as to what is done in other potteries in connection with the furnishing of materials and supplies?

A. Yes, I know about that. I know what is done.

Q. What is the situation so far as you know it?

A. Well, the situation is very largely the same as it is at ours, at the Mt. Clemens Pottery, and the employees furnish their own. • • •

The Master: Did you work in any of those other potteries?

A. No. It was through my being a ceramic engineer, and I knew the men that do work in those potteries. Occasionally we get together and discuss our problems.

The Master: Do you know what you were told by those engineers—well, that's what you know, what you were told by the engineers of other potteries?

A. That's right. I have had occasion to investigate, perhaps in the last year, all materials.

Mr. Lamb: I certainly think it is not proper.

The Master: I think it is hearsay. I will strike that testimony. • • •

Q. (By Mr. Cooper) Was there some practice or other, Mr. Trabue, of the decalcomania girls cutting up their sheets of decalcomania?

A. Yes, they all cut their own.

Q. Now, I wonder if you could just describe to the Court, using if you wish, to illustrate, this document which has been marked as Exhibit 61, and would you just describe to the Court what the regular practice was to when this operation was performed and what the purpose of it was and all about it?

A. This cutting operation was performed to fit the decalcomania spray to the piece of ware. The majority of the cutting was done after they had finished printing their ware, in the afternoon, before quitting time. However, at

various times during the day they would be cutting print at their bench.

Q. Could you insert there, Mr. Trabue, what form the decalcomania sheets would be when they were handed to the girls?

A. This is the form they would be in when they were handed to the girls (indicating).

Q. Would they be in wide or narrow form?

A. Well, it depended on the particular layout of the sheet.

Q. That is, it wouldn't be the big sheet such as the one which was introduced here, is that right?

A. No, that is the form that we get them, and they are given to the girls prepared and cut up.

Q. You are referring now to the document marked Exhibit 60?

A. That was not given to the girls like that. It was prepared for them. They only got print for one item. Those sheets were pinned up in thickness of 16 so they could cut 16 sprays at the same time.

Q. I don't know whether this is clear. Would the strip as the girls got it be in the form as is indicated by what exists in the lower left-hand corner of Exhibit 61, a strip with one piece of decoration on it?

A. Only one item of decoration on it, yes. It would always be in strips.

Q. I see.

A. It might be a double strip.

Q. And what would determine how many sheets a girl would take and cut out?

A. A girl would turn in an order of how many dozen dishes she would do the next day. We would supply her with enough print to do those dishes. She estimated how many she would do and we supplied her with enough print to do those.

Q. And when with reference to the quitting time would that job of cutting up the decal work be done?

A. The majority of it was done shortly before and up

until quitting time. However, some of it was cut during the day, as I mentioned.

Q. How were the decal girls paid for that work?

A. Well, the new employees or employees on a minimum, it would be included in their hours in which they were paid this minimum, and employees on a piecework, this cutting was figured in in the piece rate price.

Q. Could you explain to the court the nature of the operation which has been referred to here as centering?

A. Centering is putting the round spray in the center of a piece of ware.

Q. What would be the occasion that would necessitate that?

A. This spray was put in as part of the decoration.

Q. And would occasion ever arise of re-centering a piece?

A. Yes, we did have.

Q. What was that situation?

A. Re-centering came where a piece of ware, having already been decorated, either the spray was not in the center of the piece of ware or the workmanship was not such that the piece of ware came out right, and the center had to be removed and a new center put in.

Q. Who would do the re-centering?

A. We had the center cleaned out with an acid, then we returned these pieces of ware to decal girls to re-center.

Q. What is your observation, if any, as to how many pieces a girl would get to re-cent in the course of a week?

Mr. Lamb: Objection.

The Master: Overruled.

A. A girl wouldn't average over six pieces of ware a week, if that many.

Q. Have you had occasion to observe how long is required to put center decoration on that piece of ware?

A. These center decorations were put on along with their regular work, and six pieces wouldn't take over a minute at the most.

Q. Do you happen to have any particular recollection of an employee in that department named Dorothy May?

A. Yes, I know Dorothy May.

Q. Do you have any particular recollection in your mind as to her usual practice in coming into the department with reference to the regular starting time?

A. Dorothy May was not prompt in coming in. She was, I would say, in most cases either just gotten in the department or was on her way to her bench at starting time.

Q. Is anything at all outstanding in your recollection as to her usual practices during the day? • • •

A. Well, as I stated, Dorothy May was never prompt in coming in in the morning. She was the same way about her work. She did neat work, did good work, but she was apparently never interested in how much money she was making. She spent a good bit of time aside from doing her actual work in her department.

The Master: In what respect? What would she do?

A. She would be visiting or just—well, I would say visiting or just sitting there. Her husband would come through. He worked in another end of the shop. He would stop by. His noon hour was a different time, and he would stop in in the afternoon to talk with her. He would speak—if I would see him he would speak to me, and we would converse a bit, and he would go down and talk to Dorothy.

The Master: Were these girls paid on an individual piece rate basis in your department?

A. That is right.

The Master: Not a group piece rate basis?

A. That is right.

Q. (By Mr. Cooper) Do you know, Mr. Trabue, whether or not the company has always used the same method of computing hours worked since time clocks were installed?

A. Ever since I have been there they have, yes.

Mr. Lamb: You came there in 1929?

A. That is right.

Q. (By Mr. Cooper) Do you have any recollection as to when time clocks were installed and put into general use?

A. The time clock has been there ever since I have been there, I believe.

Q. You never punched—did you ever punch a time clock yourself?

A. No, I didn't.

Q. Now, have you ever heard any objection from any of the employees in the decorating department as to the correctness of the system that the company used in computing hours worked?

Mr. Lamb: Objection.

The Master: I will take the testimony. • • •

A. Nobody in that department ever complained to me about the computation.

Q. (By Mr. Cooper) Did any employees in the department ever complain to you about anything else?

Mr. Lamb: Objection. Are we interested in all the complaints the employees might have?

Mr. Nunneley: You had some people go on the stand here saying he didn't dare say anything to the foreman or he would be fired. You recall that, Mr. Lamb, and the Master recalls it. There was a build-up here to prejudice the Court. That was a stock question and stock answer.

• • •

The Master: I think it is relevant on that question, because there was that testimony. • • •

A. Why, I kept in very close touch with employees in the department, and they felt free to come to me with anything that was bothering them.

As far as their earnings was concerned, they turned in their own slips showing the amount of work they did. I totalled it for the pay. They checked my total, and their pay went to the office, and on payday, if there had been any error through my checking their rechecking, they came to me and we had it taken care of so that their pay was figured according to the way they had figured it and checked it.

The Master: How frequently were complaints registered in that manner as to the checking of pay?

A. The only one that I can recall would be an error on my part in transferring it from their sheet to the office.

The Master: How often would that happen? During the course of a year, how many times would it happen?

A. Well, we would go pays where it wouldn't happen in any degree, we wouldn't have any of it happen, and then maybe I made two mistakes on one pay. I wouldn't say that I didn't make very many, but since I checked it and they re-checked it, and I re-entering it well, I would say I didn't make over 12 mistakes in a year. It very rarely occurred, and it bothered me when it did, and we had it corrected.

Q. (By Mr. Cooper) Did you ever fire an employee for coming to you with a complaint about such a matter?

Mr. Lamb: Objection. There has been no testimony as to him having the right to hire and fire.

The Master: All right. I think you had better first see whether he had the right to hire and fire.

Q. (By Mr. Cooper) What is the situation with regard to that, Mr. Trabue?

A. When I was foreman of the decorating department, I had the right to discharge employees from my department.

The Master: Did you ever do it for them? There was an objection, but I overrule it. I think it is pertinent to the issues that have been raised.

A. Absolutely not.

The Master: It would be very pertinent as to whether this individual did or not. He can testify if he did but he wouldn't be able to testify for Mr. Doll. Mr. Doll has already testified.

Q. (By Mr. Cooper) Do you know of anybody in your department ever being fired for that reason by somebody else?

Mr. Lamb: Objection.

The Master: Overruled.

A. I stated I had been in the department since 1935

and I had charge of that department since that up until last year, and there was nobody fired during that time, during all that time, for anything like that, and I hadn't heard of it before my time.

Mr. Lamb: I move that the answer be stricken. The materiality of the firing is not at issue here, and the reasons described for the firing, why, it is not material in this hearing, and that matter has been threshed out before the National Labor Relations Board.

The Master: I understand him to say that nobody was fired in your department or fired for any reason in your department.

A. No.

The Master: Or for that reason?

A. For that reason.

The Master: Well, I think it is material to the issues that have been raised. I don't think it would be material if that point hadn't been made on the other side of the case, that is, they couldn't raise it for the first time here.

Q. (By Mr. Cooper) To clear the record, as I understand it, when I inquired as to that reason, that reference is to the situation of an employee coming to the management with a complaint; isn't that right?

A. Yes.

The Master: Well, the only complaint he has talked about has been about the method of computation of pay. I haven't heard of anything else.

A. Might I add to that same answer that the employees of the decorating department always understood if I didn't handle—

Mr. Lamb: Objection.

The Master: No, you can't testify as to that.

Mr. Lamb: Not as to what they understood.

The Master: No, not as to what they understood. Did they make any complaint?

A. The employees had the right, as I told them, and as I instructed them, to take any matter up beyond me if they cared to, and I know of none being taken up.

Mr. Cooper: Cross-examine.

Cross Examination

By Mr. Lamb:

Q. Don't you know of any complaints being taken up with Mr. Doll, Sr.?

A. From the decorating department?

Q. Yes.

A. No complaints that I know of, no, that I have taken care of. • • •

The Master: You say none were brought above you to Mr. Doll?

A. None that I know of.

The Master: All right, go ahead, Mr. Lamb.

Q. (By Mr. Lamb) Now, as I understand it, you say that the employees punched their time clock, went into this decorating department, and it took the two or three minutes to get to the work bench?

A. From the time clock to their bench, yes. I did say that.

Q. On the way to the time clock they passed this desk of yours which you referred to?

A. No, they didn't. In the ordinary way in, they did not. They had to come around to my desk. • • •

Q. (By Mr. Lamb) Then they, after punching the time clock, went in not to their bench by way of your desk, but to your desk by way of their bench, is that correct?

A. The decal girls did not come to my desk in the morning. The liners did.

Q. I see. Well, the liners, then, did they go to their benches first and then go over and get this liquid gold from your desk?

A. No, they came by my desk on the way to their bench.

Q. So we have it straight, they went from the time clock, to your desk, to their benches?

A. The liners.

Q. The liners did?

A. That is right.

Q. And when they went past your desk, usually they picked up the liquid gold?

A. That is right.

Q. What is liquid gold, a material that is put on the decal, or what?

A. No, liquid gold is a metallic gold fluid and oil, and it is painted on as an edge decoration.

Q. Painted on the ware?

A. That is right, painted on as a liquid.

Q. What sort of a unit did they pick up?

A. A bottle.

Q. A bottle?

A. Yes.

Q. Possibly a pint bottle?

A. No, a hundred-gram bottle about half-full.

Q. So the liners would pick up a bottle apiece, is that right?

A. That is right.

Q. And then go to their bench, is that right?

A. That is right.

Q. Was there anything else that any of the employees had to pick up at your desk?

A. That is all that they would pick up at my desk.

Q. I assume it is your testimony that the girls and other employees in your department visited the cloakroom before they punched the time clock?

A. You mean on the way out at night?

Q. No, on their way in in the morning.

A. Visited the cloakroom before they punched the time clock?

Q. Yes.

A. No, we had a restroom in the decorating department itself, and I don't know what they did before they got to the time clock, but a good many of them went to the restroom on coming into the department.

The Master: Put their coats and hats there?

A. No, their coats were left before they punched the time clock.

Q. (By Mr. Lamb) Their coats were left where before they punched the time clock?

A. In the front of the plant before they got to the time clock.

Q. That is what I refer to as the cloakroom.

A. That is right, they left their coats outside of the department.

Q. Did they have a locker?

A. Why, they have access to a locker, yes.

Q. But, anyway, they left their coats and hats in the cloakroom and proceeded to the time clock?

A. In mild weather they wore light jackets in the department.

Q. Then after they parked their stuff in the cloakroom, they proceeded to the time clock and punched the time clock, is that right.

A. As far as I know, yes. As I say, I have been in the department most times. There is congregating in the halls, at the cloakroom, there is congregating perhaps at the time clock. A group of girls getting together, they do have things to talk about.

Q. Then they punch their time clock and it takes 2 or 3 minutes to get to their bench, is that right?

A. If they went immediately to their—usually they didn't. Usually they would have things to talk about.

Q. You say there was no whistle?

A. Not at 7:15.

Q. At that starting time. You also say there is no clock in your department?

A. Numerous clocks. I had one at the desk.

Q. Any company clocks?

A. I don't believe any that the company bought. The one at the desk I bought myself.

Q. Is there a company clock on the wall or on a post?

A. There is one on the time clock.

The Master: In the department, is there?

A. In the department, no.

Q. (By Mr. Lamb) You said you would go around

at 7:15, and if you didn't see any of the girls working, you would tell them to get started, is that right?

A. It was my practice, they understood, for me to go around through the department in the morning, and if they were not working as I went around at 7:15, I would just go to them and tell them it was 7:15.

Q. Then they would get started?

A. They would go to their bench and then it would be a few seconds before they would be in actual production.

Q. Would you say that decal girls would—it would come quitting time and then it would take some time for them to finish up, sometimes some of the girls had to take some time to finish up, is that it?

A. No, if it was necessary for them to take some time to finish up, they were instructed, and it was followed up, that they were permitted to work until the next quarter of an hour, or 15 minutes after, or half an hour, and then to take that much time off the next day.

Q. Did you go around at any particular time to say, "Now, it is quitting time?"

A. Yes, I did.

Q. How many girls in this department?

A. During this period there would be between 130 and 150.

Q. And does that include liners, too?

A. Yes, that is both.

Q. Did these girls work on benches?

A. That is right.

Q. And stretched over—how big a place is your department?

A. Well, it is a large department. It is spread out; it is probably—I probably estimate it to be about 300 feet wide and perhaps 600 feet long at the longest point.

The Master: Just a minute. How far back does that go on the map here?

A. It goes from the chipping department here back to here.

The Master: You are showing from your statement, chipping here—

A. (Interrupting) To the end of the building.

The Master: To the end of the building on the right, the east end of the plant?

A. I don't know whether that distance is marked or not.

The Master: All right, go ahead.

Q. (By Mr. Lamb) As I understood your testimony, Mr. Trabue, you said that you have seen some of the girls finishing their work, or cleaning up, and so forth, after quitting time; is that correct?

A. Yes. And they have been instructed to come in later, either come in later or go out earlier the next day.

Q. So, would you tell the girls the night before, for instance, what time they should come in the next day?

A. Our regular starting time was 7:15, unless in these instances where they worked over, then I would tell them, yes.

Q. If a girl worked a little longer one day you would then tell her she shouldn't come in at 7:15, for instance, the next morning, or 8:00?

A. No, we would start in at 7:15 and tell them they would be through that much earlier the next day.

Q. So, if a girl worked a little longer one day, you mean she worked a little less time or she would be through earlier the next day, is that right?

A. That is right.

Q. And that was your infallible rule, was it?

A. Yes.

Q. Make these girls work less time the following day?

A. That is right.

Q. So if the time clock, for instance, shows a girl worked until 4:35 this afternoon—

Mr. Cooper (Interposing) Objection right there.

Q. (Continuing) —the time clock—

Mr. Cooper: Objection.

The Master: Wait a minute until he completes his question.

Q. (Continuing) —the time clock of the following day would show she only worked until 4:00; is that correct?

Mr. Nunneley: Just a minute. We object to that as a misleading question. The witness didn't say anything about the time clock. He said he observed them working after that time, certain things are done, he didn't say anything about the time clock showed that. • • •

The Master: I will take the witness' answer.

Mr. Nunneley: You can ask him about the time clock, but he didn't testify the way you stated.

The Master: The witness can state whether or not that is his testimony.

A. I testified if they were working after that time. I didn't testify that the time clock showed that, because it was the same thing at night, practically all of them went to the restroom after they completed their work before they went to the time clock.

Q. (By Mr. Lamb) Well, do I get your testimony straight, you say if a girl worked longer?

A. Yes.

Q. On one afternoon, that you would then instruct her to work a shorter time the next afternoon?

A. If she was at her bench working, yes, after quitting time.

Q. So, isn't it true, then, Mr. Trabue, that the time cards of the girls to whom you have referred as having worked a little longer one afternoon will show less time on the following afternoon? Is that correct?

A. The ones I had—yes, the ones I permitted, but the ones that had gone to the cloakroom, or whose time card shows time they were not working, it would not show that. There were girls that would congregate at night in groups and would go to the cloakroom, and their time card would show later, but they were not working.

The Master: On that point, a girl going to the cloakroom would still be out within the next 15-minute period, would she not?

A. Yes.

The Master: After she quit production work?

A. She would still be out in the 15-minutes, but it might be a matter of 10 or 12 minutes.

Q. (By Mr. Lamb) So, if the time clock showed some time between 4:30 and 4:45 one day, it should show between 4:00 and 4:15 the next day as the time she left?

A. Yes, when we were working full time in the department our quitting time was 4:15.

Mr. Lamb: May I have the time cards of Dorothy May?

Mr. Cooper: Yes.

(Cards handed to Mr. Lamb.)

Q. (By Mr. Lamb) Incidentally, Mr. Trabue, what do you refer to as the quitting time?

A. The decorating department only worked as many hours as we had work for the employees to do, and if we would work full time, our quitting time would be 4:15.

Q. Is that when you were starting at 7 or 7:15?

A. 7:15.

Q. Did you say that you just started it at 7 in the summer months?

A. Just for the period that the employees asked for it, and, as I recall, it would be in the summer months, yes.

Q. I note in Exhibit 62 that there is from November through January, that always the girls were reporting in at 7 or just a minute or two after 7. That means 7:15, is that right?

A. The starting time was 7:15, but they couldn't come past the clock until 14 minutes after, so 7:02 would be 7:15.

Q. They had instructions they couldn't come past the time clock what?

A. They wouldn't be permitted to come past the time clock between 14 minutes to the starting time.

Q. That is between 7 and 7:15?

A. Not between 7 and 7:15, no.

The Master: 7:01 to 7:15?

A. That's right.

Q. (By Mr. Lamb) Now, did you say that the regular quitting time was 4 or 4:15?

A. When we were working our regular hours, it was 4:15, but, as I say, the decorating department over no

period worked regular hours because we worked according to the work that had to be decorated. You will find that in running through those hours, that the hours would be well under 40 hours a week.

Q. Well, the way you compute them, it would be possible to keep them under 40 hours a week, yes.

Mr. Nunneley: Well, they were, anyway.

Mr. Lamb: But, keeping the cards the way you should have kept them, it would be over 40 hours a week.

Q. (By Mr. Lamb) Incidentally, you said that Mr. Doll, speaking at these meetings, said that there would be a 40-hour week?

A. When that law became effective, yes.

Q. Well, that was in 1938, do you recall?

A. I believe it was. In the fall of 1938, I believe. I wouldn't remember.

Mr. Nunneley: The witness also said there was a 44 and a 42-hour period. • • •

Q. You heard him at that time say that they were to put in a 40-hour week?

A. At the time the 40 hours came out, yes, he brought it up to us and discussed it. • • •

The Master: The question is whether Mr. Doll told you in the latter part of 1938, that you were to be on a 40-hour week.

A. As I understood it, yes.

Q. (By Mr. Lamb) You were referring to the fact, or made the statement, rather, that if an employee worked late one afternoon, that the following afternoon she would work less time, is that correct?

A. They would not have to be in succession, no.

Q. It could jump several days, then?

A. That is right. If we were working full time.

Q. So that your statement is now that when you saw an employee work after time one day, you did not tell her she would have to work a shorter time the next afternoon, but that some afternoon thereafter she would have to work a shorter time?

A. No, it was told what afternoon; and, as I say, in most cases we were not working full time. Where we were not, it was the next day.

Q. Did you tell her, for instance, if she worked late on Tuesday, that she could work late the next day, but on the day thereafter, which would be Thursday, she couldn't work so long, is that what you mean to tell me?

A. In the natural course of work, yes. In the case of a holiday or some time we were making up, she would have to work a longer day if there was some time we were making up.

Q. You picked out a day of the week thereafter where she would have to work a lesser time?

A. That is right. In the ordinary part of her work, unless there was a holiday or something where we were working a shorter day, then there were several long days, and one short day.

Q. I can't find any evidence of that rule in your exhibits, the time clock cards?

A. You are talking about liners now. I think if you will go back on my statement it would be decal girls.

Q. Which is Dorothy May?

A. Liner.

Q. Who were some of the decal girls who you refer to?

A. Well, any of them. . . .

Q. (By Mr. Lamb) This Edna Freddle, was she a decal girl?

A. She worked on decal, yes.

Mr. Lamb: Have you got her cards?

Mr. Cooper: I will see.

Q. I hand you the time clock card of Eva Freddle, being Exhibit 58-A, and representing the period for the pay period ending November 29, 1939. I will ask you if I state correctly the time when she checks out. The first Wednesday on the card, 4:21; the following Friday, 4:24; the next day listed, Saturday, 4:22; the next day listed as Monday, 4:16; the next day listed as 4:20; the next day listed, Wednesday, 4:24; the next day, Thursday, 4:21;

and the next day, Friday, 4:33; the next Monday, 4:26; and the next Tuesday, 4:25; is that correct?

A. Tuesday is the first day of the pay?

Q. Yes. Have I read the times marked on Exhibit 58-A correctly, being the time she checked out?

A. Yes, as I follow down there.

The Master: Could I see the next card following that?

(Exhibits handed to the Court.)

The Master: On 58-A, does it appear that on the second Friday she worked beyond 4:30, or, that is, she worked to 4:30 and got out after 4:30?

A. Yes, that is what it appears there.

The Master: You were going to say they should make up for that 15 minutes the next day.

A. If you notice she went out sooner at noon. The normal time is 11:45. She went out at 11:30. The same thing here, she probably got her work finished up and was in no position to finish up another piece, and went out earlier. The decorating department, we just worked according to how much work we had, and there is the case there we did not have enough work to work the full time.

Q. (By Mr. Lamb) I refer you to Exhibit 58-Q for the work period ending March 5, 1940, and I shall ask you whether or not I read correctly the quitting time of Eva Freddle during that period.

Mr. Nunneley: Just a minute. We object to the language of "quitting time," the time shown on the time card.

Q. (By Mr. Lamb) The time indicated on the time card under the words "night out."

A. That is right.

Q. The first day listed thereon, Wednesday, 4:30; the next day, Thursday, 4:24; the next day, Friday, 4:19; the next day, Monday, 4:20; the next day, Tuesday, 4:23; the next day, Wednesday, 4:26; the next day, Thursday, 4:29; the next day, Friday, 4:38; the next day, Monday, 4:27; the next day, Tuesday, 4:15; have I read those times correctly?

A. As I saw them, yes, as they appear on the card.

Mr. Cooper: What was the date of that?

The Master: March 5, 1940.

A. She was over, you notice, in the total a quarter of an hour, undoubtedly.

The Master: That is because of her first day?

A. She apparently took longer in either going to the cloak room or talking. She got out just at 4:30. Down here she got out just at 4:15, and she couldn't be working and get out at that time. She got credit for 4:30 here.

The Master: One is 4:38, but apparently she quit earlier at noon that day?

A. Yes. That is a 4:30 punch, as we call them.

The Master: You mean the clock is punched at 11:42 that day?

A. She stopped work at 11:30.

Mr. Cooper: Would the Court let me interpose one form of question which may clear up a point which hasn't been touched on yet?

I wonder if Mr. Trabue can indicate to the Court what line on the time clock card is the line on which is registered the first day of the decorating girls' first week?

A. We start on Tuesday of the week in the decorating department, the bottom line.

Q: (By Mr. Lamb) I refer you to Exhibit 58-X, being the time card for Eva Freddle for the period ending June 11, 1940, and will ask you if I read correctly the time marked on her time card under the column "night out," and the first being a Wednesday is 4:22?

A. The first is Tuesday.

Q. I am asking on this card, 4:22?

A. Correct.

Q. 4:21?

A. Correct.

Q. 4:20?

A. That is right.

Q. 4:43?

A. That is right.

Q. Next, 4:47?
A. That is right.
Q. Next, 4:45?
A. That is right.
Q. Next, 4:36?
A. That is right.
Q. Next, 4:45?
A. That is right.
Q. Next, 4:29?
A. That is right.
Q. Next, 4:29?
A. That is right.
Q. In the first column there appears nothing marked under the words "morning in" until Wednesday. Right?
A. She didn't put her card all the way in. You notice two punches there on the same day.
Q. So that both Wednesday and Thursday appear as 7:01?
A. That's right.
Q. And the next day was 7:01?
A. That's right.
Q. And the next day 7:01?
A. That's right.
Q. The next day 7:01?
A. That's right.
Q. And the next day 7:01?
A. That's right.
Q. Then the next day was 7:01?
A. That's right.
Q. And the next day 7:01?
A. That's right.
Q. And the last day is 7:02?
A. You will notice two of the punches there are out at 4:45.

The Master: Is Eva Freddle one of the prompter girls in the department in getting in or is she one of the slow folks?

A. Eva is crippled, and I am not sure whether she

drove her own car or not. I know she had her own car that she drove part of the time. Whether she brought other people or else rode with other people, why, I am not sure about that, but, as I say, I would see Eva come in the department, and she would be humping along with the rest of the people. As I recall seeing Eva come in the department with the other girls, she would be talking to them, and I believe that she was one of the ones that came in early.

Q. (By Mr. Lamb) She was the one that testified here?

A. (Nodding).

The Master: Yes, I recall her very well.

A. Eva spent numerous times telling me about—

Mr. Lamb: Objection. Just a second.

The Master: All right, you can't volunteer a statement, witness.

A. All right.

Q. (By Mr. Lamb) I didn't understand you when you said or explained something about the method of paying the girls for cutting the decals. Did you say that there was any rate of payment for cutting the decals?

A. The employees that were on a minimum guarantee were paid, yes, and the employees that were on piece work were paid, yes. This was included in their piece rate.

Q. I am asking you, the rate that was given the girls for the time spent on cutting the decals? • • •

A. As I stated, the employees who were not earning the minimum on their piece rate, that the cutting was included in their hours, and that they were to have the guaranteed minimum of 30 cents an hour. The employees who were on the piece rate, and making more than the required minimum, why, this cutting the prints was figured in, in figuring the piece rate for each item in the department.

Q. (By Mr. Lamb) Do I take your testimony to be, Mr. Trabue, that ever since October 24, 1938, the girls have been given a minimum rate of 30 cents an hour?

A. They have not been—unless they earned more than that, yes. Everyone had the same piece rate.

Q. Just understand my question correctly so that they won't object. Do I understand your testimony correctly that in the event their piece work rates did not exceed 30 cents an hour, that all girls in your department ever since October 24, 1938, when the Wage and Hour law went into effect, have been paid at least the minimum rate of 30 cents an hour?

Mr. Cooper: Objection to the form of the question.

• • •

A. No employee in there ever made less than 30 cents an hour since that time.

Q. (By Mr. Lamb) No employee—you are referring to the decorating department, of which you are foreman?

A. That is right.

Q. No employee in that department has made less than 30 cents an hour?

A. That is right.

Q. Since October 24, 1938?

A. That is right; has, you might say, made or been paid; because they didn't make it in every case; they were paid.

The Master: Did you ever have any apprentice rates when they were paid less than 30 cents an hour?

A. Yes, way back. As I recall, we had four.

The Master: Never since the Wage and Hour Act went into effect?

A. 30 cents.

Q. (By Mr. Lamb) Do you have any knowledge about a deduction of 10 per cent from the pay of any employees during the first ten weeks in which they worked for this company?

A. There was such a plan for a short time, I remember of, yes.

Q. Was that in effect in your department?

A. Yes.

Q. Did you advise the new employees when they were

working there, that they were going to have 10 per cent taken out of their pay checks?

A. Yes, when I explained to them their earnings, like I told you previously, I explained that part to them, when it was in effect.

Q. What is your testimony as to whether or not this 10 per cent deduction from new employees' pay for the first 10 weeks in which they were employed, whether or not that was in effect since October 24, 1938?

A. I don't recall the particular period. I remember such a thing being in effect.

Q. Do you remember the year?

A. I do not.

Q. Could it have been 1939?

A. I wouldn't recall the year.

Q. In fact, it was in effect in 1940, was it not?

A. I don't know the year.

Q. You don't remember that?

A. No, I don't remember the period.

Q. Do you know girls who have had 10 per cent taken from their pay?

A. Yes, I have explained it to them, explained to the girls individually.

Q. Where did you get instructions to make that deduction of 10 per cent from the pay of these new girls?

A. Mr. Doll instructed us.

Q. Mr. Doll, Senior, instructed you to that effect, is that correct?

A. Yes, sir.

Mr. Cooper: Objection, and move to have that question and answer stricken. The form of the question is, "Deductions from pay," and the testimony which has been given here shows clearly that it wasn't a deduction from pay, but it was a lower rate of pay for a girl for 10 weeks; and, of course, the whole thing is immaterial because we don't know any of this happened after October, 1938, or whether it was all prior to 1938. • • •

The Master: The witness has testified as to his explana-

tion to the individuals when they started work, and I think with that in, that amplified the testimony sufficiently, so that I will let it stand. • • •

Q. (By Mr. Lamb) Did you tell these girls that 10 per cent was going to be taken from their pay check?

Mr. Cooper: Object to the form of the question.

The Master: He can state if that isn't exactly what he told the girls, he can state what he did tell the girls. He can state whether he told the girls that. Did you state to them that 10 per cent was going to be taken off?

A. As I stated, they were guaranteed 30 cents an hour minimum. It was explained to them the piece rate on each one of the items, whatever item they would be doing, and I pointed out to them their piece rate during this particular period was 10 per cent less than the full piece rate in the department.

Q. Do you know that 10 per cent was taken off of the minimum?

A. No.

Q. You don't know.

A. It was not taken off. • • •

Re-Direct Examination

By Mr. Cooper:

Q. I think, Mr. Trabue, you spoke of some toilet or restroom within the decorating department.

A. Yes, there was a toilet in there.

Q. Can you indicate that on Exhibit 30-A?

A. Here it is, right here.

Q. You are indicating the space on that exhibit marked "W toilet" somewhat to the left of and below the word "Decorating," is that right?

A. That's right. It is this space in here.

Q. Now, what was your observation, if any, with reference to whether or not after entering the department it was a common practice for girls to go to that restroom?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, this was—

The Master: You may answer it.

A. This was a toilet, as I mentioned, here, and the girls, in coming in and particularly going out at the end of the day, they went to this toilet. In the morning they did go in, not all of them, but a good many of them would congregate there in and outside the door.

Q. Did you tell the Court where the strips of decal were kept overnight for the decal girls?

A. The ones that were to be used or the ones that they were to use the next day were kept at their benches.

Q. Was the gold for the liners, the gold that the liners were to use the next day, kept at their bench?

A. No. That was turned in at my desk every night.

Q. What was the reason, if you know, for that practice as to the gold?

A. Because of the value of the gold and because the receptacle it was kept in was glass and it was possible that it would get broken during the night in some shifting. It was also necessary to replenish their supply at night so they would have it the next day.

Q. Did you take any particular occasion before coming down here today to refresh your recollection as to the history of the Wage and Hour Law, Mr. Trabue? • • •

A. I didn't refresh myself on the particular time of this Wage and Hour Law changes. I have known all along that there were changes made. I didn't refresh myself as to the time that these changes were made.

Mr. Cooper: I wonder if we could straighten the record up, if the Court please. I would like to ask the witness to state in a general way what his recollection is about the history of the various changes and standards in this Wage and Hour Law.

Mr. Lamb: If the Court please, in the first place it isn't highly material as to this employee's description of the history of the Fair Labor Standards Act of 1938. We know what it is. As to the legal effect of it, that is.

Secondly, after a recess and after a witness has taken

the stand and given a statement and story and described events; it is improper under any theory to bring that witness back, even under the guise of clarifying his testimony, to have him revise what he has said on the direct examination. * * *

The Master: I remembered he mentioned 44, 42 and 40 hours.

Mr. Cooper: Precisely. * * *

The Master: Well, I think as to a question of dates witnesses often are confused and I think it is obvious to me and to everybody as to just what happened in the witness' testimony. I think Mr. Cooper is entitled to go into it. You went into it on cross-examination. I will let him go into it on re-direct.

You may answer the question.

The Witness: Read the question again, please?

The Master: Will you re-state the question?

Q. (By Mr. Cooper) What is your recollection, Mr. Trabue, as to the various standards as to hours or wages which have been in effect at different times since this Wage and Hour Law first became effective?

Mr. Lamb: Objection on the ground it is seeking to impeach their own witness.

The Master: Overruled.

A. I thought I answered that question right last time. We can have it read back. But, I asked when this 40 hour minimum wage and hour came into effect, and I understood him to say in 1938, so I answered accordingly. We were instructed at the time these changes were made in the wage and hour, we were at first on 44 hours per week, which ran one year, and then we went on 42 hours per week for a year, and then we went on 40 hours a week since that time, and as I answered that question I understood he gave me a time when the 40 hour week went into effect.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled. * * *

A. At that time I asked Mr. Doll what years these

came into effect, I didn't remember the sequence of the years and I talked to him about the sequence of the years or brought out the three sequences about the 44, 42 and 40, to get the changes between the 44, 42 and 40. As I say, I thought I had answered that question. I thought I had asked the gentlemen here the question when this 40 hour came in before I answered it in my previous examination, as I understood, and that he gave me that date as being the 40, that the 40-hour came in, and I so understood I was answering him. • • •

Q. (By Mr. Cooper) In referring to this gentleman here in your last answer, for the record, you were referring to the gentleman sitting across the table from me, Mr. Edward Lamb, counsel for the plaintiffs?

A. Yes, that's right.

Q. Mr. Trabue, did you state during the course of the cross-examination by Mr. Lamb that you had or that the company had paid all of the girls employed in the decorating department a minimum of 30 cents an hour? • • •

A. I believe I stated that, but if, since the 40-hour didn't come in effect in 1938, that would be a statement or that would be—well, that wouldn't be correct. • • •

A. I asked when the various periods came into effect, and in our discussion I brought up the point that I had mentioned the 30-hour—or 30 cents an hour for this period, which I mentioned was wrong. The Judge had asked me shortly before recess if we had ever paid lower than 30 cents, and I answered "Yes, 25."

Q. Do you recall whether or not there were two minimum wages at different times under this wage-hour law?

Mr. Lamb: Objection. This is not proper. • • •

The Master: Frankly, on cross-examination, while I gave you free rein to go ahead and restricted them from making suggestions to the witness, it is quite obvious to me it isn't something that would make me lose faith in the witness and think he was coming down here and making up a big story because he made a mistake as to the date the 44 and 42 and 40 provisions of the Act went into

effect. Anybody could be mistaken about that. I think it took me awhile myself in this case to find out just when.

Mr. Lamb: I know, but if a witness has been coached on a story and he comes and tells that and gives a set of facts, describes the facts, and then on cross-examination I show the facts and the story are not correct, and he comes off the stand, then has a huddle with his lawyers or his boss, Mr. Doll, then goes back on the stand and says what he had said so positively before as facts is incorrect—

The Master: It is easy for me to see how he got confused. You asked him on cross-examination as to whether Mr. Doll stated in October of 1938 or thereabouts that the work week would be 40 hours or less, and he asked: "Is that the time the law went into effect"? It was stated that that was the time the Wage and Hour Law went into effect.

I can see how when he asked that, "Is that the time when the law went into effect," he might have been thinking was that the time the 40-hour provision of the law went into effect.

So it is easy to see why he might be confused on it. It is hard to see why there would be any reason on earth why he would want to testify that Mr. Doll cut down the work week to 40 hours before it was cut down to 40 hours. • • •

Re-Cross Examination

By Mr. Lamb:

Q. How big is the women's toilet in this department?

Mr. Cooper: Objection. If is in evidence on the scale plat, if your Honor please.

The Master: Overruled.

A. What do you mean, how big?

Q. (By Mr. Lamb) That's what I mean. How big are they?

A. You mean the estimated size of it?

Q. Yes. The number of seats?

A. Oh, not the number of seats there. That is a women's toilet and I haven't had occasion to go in there, except at one time when the toilet was running over, and there are four or five toilets in there, and wash bowl.

Q. Was it your intention to tell the Master that those 150 girls in your department all visited the toilet after punching the time clock and before they would go to their benches?

A. I didn't say that all of them did. I said that they came in at various times in the morning, and a good many of them did visit there and they congregated around in front of it and in the toilet. • • •

Q. After you finished your cross examination, is it not a fact that a recess was taken and that you then conferred with Mr. Doll, Senior, Mr. Cooper, Mr. Nunneley, attorneys, in regard to changing the testimony that you had given on cross examination? Did you talk to these men at recess about the matter of minimum pay? • • •

A. I did not talk to them about changing the testimony. I talked to them about the time that these laws came into effect, the three stages of the law, and I mentioned that I had made a mistake at that time. • • •

Q. Then did they say anything about changing your testimony in regard to this 30-cent minimum?

A. In what way?

Q. Did any one of these three men say anything to you about your testimony as to the 30-cent minimum since 1938?

A. I told them, and I believe I had testified to that effect.

The Master: The question is, did they ask you?

A. They said they believed I had, yes.

Q. (By Mr. Lamb) Did they advise you what you should say on your re-direct examination in response to the question that was propounded by Mr. Cooper?

A. They didn't advise me what to say. I knew that the change had been made. And it was brought out about

when it was paid, and I couldn't clear it up at that time. They didn't advise me to clear it up.

Q. Well, now, what is your story now as to whether Mr. Doll in the year 1938 advised you and the other foremen as to the adoption of the 40-hour week? Did he or did he not in the year 1938 make such a statement as you have testified before?

A. Since I have the date straight, he advised us on the 40-hour week when the 40-hour week became effective in 1940.

Q. Do you say that your testimony to the effect that his statement was given in 1938, November or December of 1938, was incorrect and that he did not make such a statement at that time to you or the other foremen?

A. Due to the conflict in dates, in 1938 he did not make such a statement as 40-hours.

Q. I see. So you say there was no such meeting as that you have testified to before, in 1938? • • •

A. In 1938 we had a meeting discussing that the plant was going on 44 hours and not 40. • • •

CHARLES E. DOLL, SR., was thereupon recalled as a witness, and being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Cooper:

Q. I hand you, Mr. Doll, a bundle of several sheets and ask you whether you can identify the sheets thereon which have been marked for identification as Exhibit 103 and 103-B?

A. Exhibit 103 and 103-B are sponge invoices from the Divers Sponge Company, Cleveland, Ohio.

Q. Where did you obtain the invoices?

A. These invoices were obtained from the voucher files of the Mt. Clemens Pottery Company.

Q. Do they represent purchases by the Mt. Clemens Pottery Company?

A. They do.

Q. Of sponges, from the Divers Sponge Company?

A. They do.

Q. And is what has been marked Exhibit 105, a similar document?

A. Exhibit 105 is an invoice for shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio.

Q. Did you state the date?

A. Date of April 1, 1941.

Q. And can you identify what has been marked as Exhibit 106?

A. Exhibit 106 is an invoice for shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, invoice dated October 17, 1940.

Q. And can you identify the sheets marked 107 and 107-B?

A. Exhibit 107 and 107-B are invoices for shipments of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio, under date of August 2 and August 21, 1940.

Q. And Exhibit 108?

A. Exhibit 108 is an invoice for shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio; date of invoice, July 15, 1940.

Q. And Exhibit 109?

A. Exhibit 109 is an invoice for a shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio, under date of November 30, 1939.

Q. And would you identify what has been marked as Exhibit 104 and 104-A?

A. Exhibits 104 and 104-A are invoices for shipment of rubber gloves received by the Mt. Clemens Pottery

Company from the Welton Rubber & Asbestos Company.

Mr. Lamb: Rubber, what was that?

A. Welton Rubber & Asbestos Company.

Mr. Lamb: What are the products that were purchased?

A. Rubber gloves. Under date of April 7, 1941.

Q. And can you identify what has been marked as Exhibit 110?

A. Exhibit 110, an invoice for an order of galvanized pails received by the Mt. Clemens Pottery Company from the Reeves Steel & Manufacturing Company, Dover, Ohio, under date of December 27, 1940.

Q. Mr. Doll, did you make a search of the records of the Mt. Clemens Pottery Company to ascertain whether there were any invoices since 1938 covering the purchase of scissors?

A. I was not able to find any invoices for the purchase of scissors, and upon inquiring from the stock room with respect to that particular item, they advised me that we have made no purchases of scissors for sale to employees since 1938.

Q. Did you make a search, Mr. Doll, of the invoices, to see whether you could find an invoice covering the purchase of scrapers?

A. I looked for an invoice for scrapers. I was alone at the office last night, and I was unable to find any invoices for scrapers, and upon inquiring this morning at the stock room, they told me that there had been no recent purchases for scrapers due to the fact that the advent of our automatic machines during recent years had left such a surplus of these hand tools around in the department, that the men had been using up the surplus stock of the jigger men who were no longer jiggering.

Mr. Lamb: Well—.

Mr. Cooper: If the Court please, we have produced and had Mr. Doll identify these documents pursuant to the Court's suggestion, for the purpose, as I understand it, of enabling Mr. Lamb, if he desires, to examine Mr. Doll concerning them. • • •

Re-Cross Examination

By Mr. Lamb:

Q. As I understand it from your Exhibit 104, the Mt. Clemens Pottery Company purchases rubber gloves at the rate of $2.70 a dozen, less the 2 per cent discount for the 10th of the succeeding month, is that correct?

A. The terms are shown on the invoice. I haven't got that before me.

(Exhibit handed to the witness.)

A. That is correct.

Q. That is at the rate of $2.70, was it, Mr. Doll?

A. $2.70 a dozen.

Q. And as I understand it from Exhibit 110, you purchased water pails?

A. There is only one type of pail on there that is sold to employees. That is the cheaper one. These upper ones are not sold to employees.

Q. The ones that are sold to employees—

A. Cost $2.50 a dozen.

Q. $2.50 a dozen?

A. Yes.

The Master: Has there been a standard price of 25 cents for each pail sold to employees?

A. Yes.

The Master: Or did that vary?

A. Well, it varied some, but that has been in effect for quite a while. It was definitely in effect at the date of these increases. I can show you the invoices covering that.

Mr. Lamb: No further cross examination, I think.

The Master: I suppose these exhibits that have been referred to ought to be in evidence, that is, Exhibits 104 and 110. Did you ask about these others, too, or what?

Mr. Lamb: I made notes on it. I guess I didn't ask him, but it has been identified, and I don't care about it.

The Master: Well, do you want to offer them?

Mr. Lamb: I don't care about offering them particularly. • • •

The Master: Well, suppose I just admit them in evidence and then the parties can stipulate that they will be in evidence, without either side offering them. Is that all right? • • •

The Master: Then that shows. All right, I will limit the admission on the invoices and permit you to substitute photostat copies for convenience.

Re-Direct Examination

By Mr. Cooper:

Q. Can you tell the Court, from Exhibit 110, Mr. Doll, the price the company paid for pails of the sort that was subsequently re-sold to employees?

A. $2.50 a dozen.

Q. And have you made any check of the company's records that discloses or refreshes your recollection as to the amount for which those pails were sold to employees?

A. They were sold to employees at 25 cents each.

The Master: When you say $2.50, they retail at that, but you actually paid 2 per cent less than that, did you not?

A. Your Honor, you can consult any business practice throughout the United States, and the cost of the article is always the invoice cost, not the cash discount. Cash discount never figures into the matter of the cost of an article.

The Master: Well, just to get it clear, whatever the business practice is, the cost, then, you say, would be $2.50 and the cash payment to the company billing the goods to you would be $2.45.

A. No. The billing price of the company is $2.50.

The Master: How much do you pay for it?

A. The 2 per cent allowed a person for cash discount is simply a gift on the part of the manufacturer to someone who pays his invoices in advance.

The Master: Well, do you pay by check for these pails?

A. We do pay them by check, yes.

The Master: And how much is the check that is made out to the manufacturer?

A. The check would be the amount of the invoice less 2 per cent.

Mr. Lamb: That is indicated on the back of the sheet.

A. It is covered on the back, yes.

The Master: In that case it would be $2.45.

A. I can't concede that. I can't concede that under business's practice.

The Master: Well, it is like my Edison bill. They bill me a certain amount, and then they deduct something if I pay it by a certain date. Why, they give me a discount. I don't know whether it is 10 per cent. I think it is 10 per cent, but anyway it is a substantial discount, quite a substantial discount, and the actual amount of the check I make out to them is the net amount.

A. In the case of the Edison Company, your discount is taken off by them in the first place, and it is a penalty if you over-run your time. That is the reverse condition.

The Master: All right. Well, go ahead. I think the facts are clear.

Q. (By Mr. Cooper) And what appears from Exhibit 104, Mr. Doll, and also 104-A, if there is any difference?

A. They are the same item.

Q. As to the price paid by the company for rubber gloves of a style subsequently re-sold to the employees?

A. The price charged the company is $2.70 a dozen.

Q. And was that similarly subject to any cash discount?

A. That invoice is also subject to the 2 per cent cash discount.

Q. And can you state the price at which those items were re-sold to the employees?

A. They were re-sold to the employees at 27 cents a pair.

Mr. Lamb: Well, what records have you looked at, Mr. Doll, to determine the price that these articles were re-sold to the employees at?

A. By a comparison of the payroll records of the same person. • • •

Q. (By Mr. Cooper) I think that you had stated—I am not sure whether you had—as to the sponges indicated in Exhibit 109, which the company bought at 20 cents each—how much were they resold to the employees at?

A. At 19 cents each. I also checked this price against our office record showing the current price being charged for—well, at the particular period—for deductions for the particular items.

Q. And what price on Exhibit 108, Mr. Doll, is—well, what appears as to the purchase price of the sponges covered by that invoice?

A. Exhibit 108 shows sponges charged to the Mt. Clemens Pottery Company at 20 cents each and sold for 20 cents each.

Q. And what is the situation with respect to the sponges referred to on Exhibits 107 and 107-B, if there is any difference there?

A. 107 is the only invoice in this group that refers to sponges sold to the employees. 107-B is a type of sponges used for other factory purposes and not sold to the employees. These sponges cost us 22 cents each and were sold at that time for 20 cents each.

Q. What was the date of that, Mr. Doll?

A. August 2, 1940.

Q. And what is the situation with respect to the sponges referred to on Exhibit 106, dated October, 1940?

A. The invoice of October, 1940, shows sponges costing the Mt. Clemens Pottery Company 25 cents each, and they were sold at 27 cents each.

Q. And what is the situation with respect to the sponges referred to in Exhibit 103?

A. Exhibit 103 shows sponges costing the Mt. Clemens Pottery Company 26 cents each, sold to the employees at 27 cents each.

Q. And the date of that is—

A. November 4, 1940.

Q. And what is the situation disclosed in Exhibit 105?

A. Exhibit 105 shows sponges purchased April 4, 1941, costing the company 35 cents each, sold to employees at 30 cents each.

Q. Now, on the occasion of searching for these invoices, Mr. Doll, have you obtained any particular familiarity as to the sum total amount in dollars of these supplies purchased for resale to employees?

A. I didn't attempt to make any tabulation, because I have known right straight along that we were dealing with chicken feed, and I felt that before and still feel it doesn't merit the effort put in on the matter. But, however, as I did go through it, I was impressed by one particular fact—

Mr. Lamb: (Interposing) Objection. We don't care what he was impressed by. * * *

The Master: Well, I wouldn't let him go beyond the question of these deductions, but this is still on the subject of these deductions for supplies. I will hear what he has to say.

A. As the result of the examination of the invoices, I definitely found out that when I had stated on previous testimony that the items, exclusive of sponges, would not exceed $1,000 a year, I found that a more correct estimate would be a few hundred dollars a year; considerably less than $500. * * *

Q. (By Mr. Cooper) What has been your observation, Mr. Doll, as to whether the company re-sells all of its sponges on those invoices?

A. Oh, we do not by any means. There is not a one of these items but what a considerable part of them are used up for other operations around the plant.

Q. Have you made any observation as to whether or not in the shipments of sponges, there are certain culls or items which are paid for but which can not be used?

A. These sponges come in bales which are packed at the fisheries, and they occupy—in a bale we will have varying qualities of sponges. You pay the same price for each piece in the bale, and theoretically they are supposed to be of equal quality. Some will be firm, regular-

shaped sponges; others will be irregular in shape or off-shape and soft, and we estimate that we have about 10 per cent culls out of each bale of sponges. * * *

June 26, 1942

Q. I notice, Mr. Doll, When court adjourned yesterday, there was a pending question unanswered as follows:

"I notice in the hearing here, Mr. Doll, reference has been made from time to time to a production belt department. Will you state what department, if any, is sometimes referred to in that way?"

A. It is my understanding that the references are to the glost belt system.

Q. Have you had occasion to make any observation or do you know how many shifts there are on the glost belt system?

A. The glost belt system is operated on a single shift.

Q. Whether or not there is any afternoon shift in that system?

A. There is no afternoon shift.

Q. Have you had any occasion to observe, Mr. Doll, the practice on the glost belt on Monday mornings?

A. I have. * * *

The Master: Well, this is their principal witness. In a long examination they might have forgotten a few things they should have covered. I think I will permit it if it doesn't get too extensive.

Now, will you answer the question? Have you observed the glost belt line on Monday mornings?

A. I have.

Q. (By Mr. Cooper) And what was your observation?

Mr. Lamb: Objection.

The Master: Overruled.

A My principal observation with regard to any change that had been made in the ordinary procedure of the

operation of that belt, was that at about the time of the 40-hour week going into effect, or in about October, 1940, that they established a practice of having a limited number of employees of that belt come in 15 minutes earlier than the rest of the force in order to load the belt with saggers for starting work.

Q. Have you previously testified, Mr. Doll, as to the length of operation, that is, the number of hours a day that the pressmen in the slip house are at work?

A. Yes. I had previously testified that they work on 8-hour shifts.

Q. Three 8-hour shifts a day?

A. Three 8-hour shifts daily.

Q. Have you had occasion to make any observation as to when these men eat their lunch?

A. These men do not check out for a lunch period due to the fact that they are somewhat muddied up by the handling of the clay, and that they simply stop their work at some convenient period during the 8-hour shift, and sit down right in the department, and take a lunch period of about a half hour.

The Master: Do they make that half hour up some other time, then, or are they credited with working?

A. How is that?

The Master: Do they make that half hour up some other time, then, or are they credited with working 8 hours?

A. They are credited with working 8 hours. In other words, that lunch period is not deducted off of the company's calculation as to the time worked.

The Master: They are paid on a piece work basis just the same as the others?

A. They are.

The Master: That was explained yesterday. Go ahead.

Q. (By Mr. Cooper) One of the plaintiffs in this case is Local 1083, United Pottery Workers of America, affiliated with the CIO. Can you state, Mr. Doll, whether this suit is the first instance of any action or proceeding

brought against the Mt. Clemens Pottery Company by that organization?

Mr. Lamb: Objection. It is immaterial whether it is the first or second, or whether this local has brought proceedings against them before the National Labor Relations Board, or Circuit Court, or anything else. • • •

The Master: If you simply want to show the proceedings that have been brought against you, I will let you go that far, but not beyond that into the entire relationship between the union and the management. I will hold it is too late to do that. And, instead of finishing this week, I am afraid we would get off into a situation where we wouldn't finish for several weeks. But, if you want to simply get on the record the proceedings that have been brought against you by this Local of the CIO, I will let you do that.

Mr. Lamb: Of course, I want the record to show my objection.

The Master: Yes.

Q. (By Mr. Cooper) Do you recall, Mr. Doll, whether or not any charges were filed against the Mt. Clemens Pottery Company by the CIO, or this Local of the CIO, in the autumn of 1940?

A. There were such charges filed with the NLRB.

Q. What were they?

A. They were charges of alleged discrimination or discharges of employees.

Q. And do you recall the date with reference to the time of the strike of April 14, 1941, that this action was instituted?

Mr. Lamb: Objection. • • •

The Master: I will hold that is already on the record. We have the date this action was instituted, and we have the date the strike took place. I thought you meant the date of the filing of the charges of the NLRB.

Q. (By Mr. Cooper) Do you recall, Mr. Doll, any proceedings with respect to a proposed NLRB election?

Mr. Lamb: Objection. That is a leading question, and also entirely immaterial in this proceedings.

The Master: Well, under the same ruling that I have announced, he may answer.

A. I recall that Local 1083, CIO declined to become a party to an election during the first strike in 1941.

Mr. Lamb: I ask that the answer be stricken.

The Master: It may stand. • • •

Q. (By Mr. Cooper) Are you familiar, Mr. Doll, with whether or not any proceedings were brought by Local 1083 with the Michigan Department of Labor and Industry?

Mr. Lamb: What difference does this make? After all,—I object to it.

The Master: I will just take, to get on the record,—it is certainly a matter that can not be very much in dispute whether or not proceedings were brought in court, or before administrative tribunals, and I will take the evidence.

Q. (By Mr. Cooper) What happened in that connection, Mr. Doll?

The Master: As to whether proceedings were brought.

A. To my knowledge, complaints were made to the Michigan Department of Labor that the Mt. Clemens Pottery Company was operating equipment that was unsafe for employees to work with.

Q. And what was your observation as to the result of the filing of that complaint?

Mr. Lamb: Objection. • • •

The Master: Well, he may state whether an investigation was made.

A. An investigation was made by a personal visit to the plant by the Commissioner of Labor and his chief deputy.

The Master: I think as to the results of the investigation you have already stated there was no formal proceeding before the Commission, nor formal action taken. I don't think it is proper, particularly on a collateral matter like this, for the witness to state what the inspector told him, and I will let it rest at that point. If

you want to make an offer of proof on that you can do so.

Mr. Nunneley: In that connection we offer to show that the Department of Labor & Industry found the complaints to be without foundation. • • •

Q. (By Mr. Cooper) Mr. Doll, do you know whether or not in the autumn of 1941 Local 1083 filed any charges in the Michigan Department of Health?

Mr. Lamb: Objection.

The Master: Same ruling; he may state whether they filed charges, if he knows.

A. There were charges filed with the Michigan Department of Health that the Mt. Clemens Pottery Company was unsanitary and an unhealthy place in which to work.

Q. (By Mr. Cooper) And what was the result of that charge, so far as you know?

Mr. Lamb: Objection on the same ground that the Master has already ruled.

The Master: Yes, I think—if you don't have any formal action by the Department. I don't think I will permit it.

Mr. Nunneley: We can offer proof that the complaint was found to be without merit and unfounded by the Department and was in fact without merit and unfounded. • • •

Q. (By Mr. Cooper) About what time was that, Mr. Doll?

A. To the best of my recollection, it was about in September, 1941.

Q. Do you have any knowledge or recollection as to whether or not at about that same time, any further charges were filed by Local 1083 with the NLRB?

A. We were so advised by the NLRB.

(Certified copy of petition in case of Eric Sopha vs. Mt. Clemens Pottery Company was marked Defendants' Exhibit 111.)

Mr. Cooper: At this time, if the Court please, and in connection with the present line of investigation, I offer in evidence a document which has been marked

as Exhibit 111, and which is a certified copy of the petition and affidavit and attachment to obtain an order of garnishment in proceedings entitled Eric Sopha et al. vs. the Mt. Clemens Pottery Company, filed December 6, 1941, in the Court of Common Pleas for Lucas County, Ohio, and bearing the number 159790. • • •

Mr. Lamb: There is an objection to the exhibit on the ground this has nothing to do with this litigation and is immaterial.

The Master: I will admit it without ruling on its legal effect. There has been some testimony about that, and it will show what reference is made to in that testimony. • • •

Mr. Lamb: All right, I would like to call a witness out of order. Could we take a short recess?

The Master: Do you want a recess first?

Mr. Lamb: Yes.

The Master: All right, we will take a recess.

(Recess.)

JAMES H. WISHART, was thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows: • • •

Direct Examination

By Mr. Lamb:

Q. Will you give us your residence address, please, Mr. Wishart?

A. 9952 Ward, Detroit, Michigan.

Q. Ward?

A. Ward Street, yes.

Q. What is your business address?

A. 281 West Grand Boulevard, Detroit, Michigan.

Q. Will you kindly tell us what business you are in, or

what is your capacity with the organization with which you are associated?

A. I am employed as director of the research department by the United Automobile Aircraft and Agricultural Implement Workers, CIO.

Q. How long have you been the head of the research department of that organization?

A. I have been employed there since January of 1940.

Q. And prior to that did you have association as research or educational director of any other organization?

A. I was employed prior to that by the United Rubber Workers, CIO, at their headquarters at Akron, Ohio.

Q. In these research and educational capacities?

A. In these research and educational capacities.

Q. The International Union of which you are now the research director is the largest trade Union, is it not, in the world, at the present time?

A. That is our conclusion from an examination of reports.

Q. With more than a half million members?

A. We estimate about 700,000 at the present time.

Q. Workers throughout the automotive equipment, aircraft, farm implement, and other allied industries, is that correct?

A. That is correct.

Q. And located throughout the United States and Canada?

A. That is correct.

Q. In your capacity as research director of this international trade Union, have you had an opportunity to examine contracts and pass upon contracts, and know the contents of contracts that are in existence throughout the industries mentioned?

A. That is correct. The contracts signed by local unions are submitted to the international union, and it is part of our responsibility to examine and analyze those contracts, to make recommendations to the international officers in connection with them, and to keep on record a complete tabulation of the provisions of such contracts.

The Master: That is, in unions generally throughout the United States?

A. These contracts are submitted by the local unions of our own international union. In addition to that, we have had as part of our responsibility for purposes of negotiation to keep in very close touch with provisions being established in other contracts for other organizations.

Q. That is, contracts not only in the industries with which your international is concerned, but in industries of all kinds throughout the United States?

A. That is correct. That is, a provision, say, in a contract for a steel plant, over which we have no jurisdiction, may establish certain principles, which may be applied to our own contracts. For that reason it has been part of our duty to keep a very close check on all such developments.

Q. You had a kindred experience prior to 1940, you say, as research—

A. We had similar responsibilities, yes, for the United Rubber Workers.

Q. United Rubber Workers. Can you give us some rough idea of the number of contracts which your own organization has with various companies throughout the United States?

A. We have a total of about 1000 contracts. Of course—

Q. For instance, a General Motors contract, although it would cover—

A. It covers 97 plants at the present time.

Q. That particular contract—

A. That is right.

Q. (Continuing) —might cover 97 plants, you say?

A. That is right.

Q. And that would be true of Ford or any plant, or company that might have several plants?

A. We have a number of corporations that have corporation-wide agreements; General Motors, Ford, Chrysler, and I think the Eaton Spring Company, and a num-

ber of others have established their contractual relationships with us upon that basis.

Q. Do you subscribe to various news and research publications covering labor and working conditions generally?

A. We believe we have a very complete coverage and our budget for publications of that kind is very generous and it is our opinion that we receive all the publications reporting developments in collective bargaining which might be of any conceivable value to us or the international union.

Q. In your experience with these matters concerning employment relationships, you have, therefore, been able to obtain an opinion or form an opinion about the custom prevailing in industry relative to working conditions, and particularly with reference to the time worked by employees, is that correct?

A. That is correct, and I might say in supplementing that point that of course we have had very considerable direct personal contact in negotiations with negotiators and with local union officers in regard to plant procedure and other matters affecting possible collective bargaining relationships.

The Master: Does your own experience go beyond that, to the provisions in collective bargaining agreements, and go to actual plant conditions that are not embodied in the agreements?

A. For situations which, say, are not directly referred to in the collective bargaining agreement itself.

The Master: And that experience is based upon the contacts you have had with management.

A. That is correct, and our own local union officers and representatives.

Q. (By Mr. Lamb) Can you advise us from your experience and observation your conclusion as to the payment made by employers, the custom of making payment by employers for time worked by employees?

A. The principle established there is that—

Mr. Nunneley: Just a minute, the question is can he advise him; it doesn't call for a statement.

Mr. Lamb: You can say first yes or no.

A. Yes.

Q. (By Mr. Lamb) And will you advise us then what your conclusion is? • • •

A. The principle there is that every minute's work shall be paid for at the established rate for the classification by the employer. • • •

Q. (By Mr. Lamb) Can you advise us whether preparatory work, or what the custom is with reference to preparatory work such as getting machinery ready or the equipment in position and ready for active production work? Can you advise us what the principle or custom is with reference to the payment for this so-called preparatory work, getting equipment and machinery ready for productive work?

A. The first few minutes of a worker's regular shift time may be taken up, if the job requires it, in making incidental preparations for direct production itself. I know of one case where it is necessary to heat lead before production can start. In that case, one representative of the group of workers will come in ahead of time for that purpose, but he is paid for that time at his regular rates.

The Master: How long does that particular job take?

A. I believe that must be about a half hour.

The Master: What can you say as to changing clothes or putting on uniforms that may be necessary in the work?

A. Usually after a—may I outline the general practice in UAW plants?

The Master: Yes. Perhaps Mr. Lamb was going to bring it out.

Mr. Lamb: That is all right, go ahead.

A. The men will punch in their clock before the starting time of their shift, that is, before they have to go to work. Then they take their coats off and go on to the job at the official time for the starting of the shift, and the

first minute worked on the shift is paid for, naturally, as part of the regular compensation for the day's work.

The Master: Just to take a concrete case, suppose you have a plant where the shift is supposed to start at 7 o'clock and there is a whistle that blows at 7 o'clock. We will say the employee's place of work is 100 feet beyond the time clock and that before starting on his work he has to change from his street clothes to overalls, or put overalls over his street clothes, we will say. When does he do that job of changing his overalls, putting his overalls on?

Mr. Lamb: What I wanted the Master to include in the question, or at least to clarify to the witness, is whether or not the employee has changed his clothes in the cloak room before punching the time clock. I wonder if that is—

The Master: I was asking what the practice was. We will assume it is summer time, when he doesn't have to change any clothes, but simply put overalls over the clothes, so as to protect his clothes from dirt and grime. Is that common, or do they usually make a complete change of clothes?

A. In most cases, there is no change of clothes involved.

The Master: That is, the man comes to work in his working clothes?

A. Yes. Of course, a welder will probably have to pick up his mask. That may be done a few seconds before work actually starts.

The Master: Do you mean by that a few seconds before the whistle blows?

A. That is correct.

The Master: Are you familiar with instances where employees must put on overalls or do put on overalls before starting their work?

A. I am familiar with the cases where men place—put on aprons. That is done as part of the preparatory work in the few seconds after the whistle blows, in the minute

or so after the work technically has started for the day.

The Master: Are you familiar with cases where after the employee gets to the plant, he makes a complete change of outfit, that is, takes off his clothes that he comes to the plant in, and puts on a uniform or older clothes that he can do his work in?

A. I am not familiar with such cases.

Q. I wanted to ask you, Mr. Wishart, the practice where an employee is tardy, and, if possible, if you will refer to existing situations of that sort in this area. Assuming that an employee punches in at 7:01 in the General Motors plant, for instance, is one minute late, that is, after the whistle blows at the General Motors plant and he punches in at 7:01, what is the practice with reference to tardiness of that sort?

Mr. Nunneley: Just a minute, if the Court please. We are going to object for the reason there is no claim made in this case about any deductions for tardiness. • • •

The Master: Even if it isn't too closely related to the other claims here, it is very closely related so that I will take the evidence on it.

You may answer.

Q. (By Mr. Lamb) Will you explain the practice in this area with reference to tardiness where an employee punches in at 7:01, for instance, after the regular starting time?

A. There are two general procedures for handling that. In General Motors plants, for instance, if the employee comes in at 7:01 he will not receive credit for work done between 7:01 and 7:06. But, he is not required to work those minutes. If he wants to work those minutes, he can do it, but he won't receive pay for those minutes.

Q. He is not required to work until 7:06?

A. He is not required to work until 7:06. In other plants, if a man comes in, let's say, 5 minutes late, he is given the privilege of working an additional 5 minutes at the end of his shift to make the full 8 hours of employment for the day.

The Master: Is there any penalty that is invoked for constant tardiness? Suppose a man keeps coming in a few minutes late every day?

A. That would give rise to the possibility of disciplinary action determined by corporation and union policy in the particular plant. That is, it might, if it were a serious offense, and one continued, result in two or three days' disciplinary layoffs. It might affect a man's standing in relation to possible promotions.

The Master: Are you familiar with any instances where, under plant practice, a man comes in at 7:01 in the morning when the shift starts at 7 o'clock, he is paid only from 7:15; that is, 15 minutes after he is supposed to start?

A. No, there is no such instance in the industry. I can say that with considerable confidence. . . .

Q. (By Mr. Lamb) Now, when you have referred to the General Motors practice, if an employee is tardy and reports at 7:01, he gets paid from 7:06, that he does not have to work until 7:06, did you give that statement based on knowledge of a contract or is that a practice or agreement entered into between the union and the management? Just how is that practice fixed?

A. That is not included in contracts. It is a matter of corporation procedure against which the union has made no objection.

The Master: In other words, he is paid in the General Motors plants, if he comes in a minute late, he is paid for six minutes less time during the day?

Mr. Lamb: Five.

The Master: Five minutes?

Mr. Lamb: If he comes in at 7:01 he is paid from 7:06.

The Master: If he comes in at 7:02, he would be paid from 7:06, would he not?

A. That is correct.

The Master: In other words, he is paid six minutes less time than if he came in on time, and he doesn't have to work during that six-minute period.

Mr. Lamb: That is correct.

A. That is correct.

The Master: I suppose that that period is arrived at because 6 minutes is a tenth of an hour and facilitates bookkeeping practices?

A. That is correct.

Q. (By Mr. Lamb) Are you able to advise us whether in the Motor Products Local, in a small shop where the men may be up to 14 minutes late without deduction from their pay, whether or not there is a provision in that relationship allowing the company to work the men that extra amount of time in the evening without the payment of overtime?

Mr. Nunneley: We object to that. Now, instead of testifying about any opinions or customs, he is testifying about what is supposed to be in an agreement with somebody. • • •

A. This is not a matter of formal agreement, it is a matter of so-called shop practice.

The Master: Well, then, I will take the answer. • • •

A. The practice in this case is this; a man will be allowed to be up to 14 minutes late without suffering any penalty whatsoever, but there is the understanding that within due time he will work 14 minutes overtime to compensate for that tardiness, although the 14 minutes overtime may not be given on the same day.

The Master: What happens if he is 15 minutes late?

A. There are other penalties involved there.

The Master: Do you know what they are?

A. It doesn't involve directly the question of pay one way or the other.

The Master: Can you tell me what those other penalties are?

A. It is along the lines which I discussed before, that is, possible disciplinary action through disciplinary layoffs, through a bad record, and other penalties of that kind.

Q. (By Mr. Lamb) Mr. Wishart, what is the customary practice in the industry generally in a case where

an employee reports at the employer's plant, goes to the cloak room, prepared himself for work, goes to the time clock, punches in at 6:46 A.M., punches out the time clock at 11:14, arrives back from lunch at 12:14 and checks out at 4:10. Assuming that the employees takes a minute or two from the time clock to go to his premises and enter productive work, what is the practice with reference to the payment in such case?

A. They would be paid for every minute of work.

Q. As indicated by the time clock?

A. That is correct. I might add to that, that the practice prevailing in a number of plants will allow for a five-minute cleanup period before the end of the shift, assuming, say that a shift terminates at 11:55, the workers on the assembly line there will be given 5 minutes to stop their work and get prepared to eat their lunch in the period given them.

The Master: You say that is done in a number of plants—

A. The General Motors plant is particularly what I was referring to there.

The Master: Are there some other plants you are familiar with where that clean-up has to be done?

A. That has come to be very much of a standard practice in the large majority of UAW plants.

Q. (By Mr. Lamb) As I understand it—

The Master: May I just get an answer to that, as to whether there are plants that you are familiar with with which the UAW have contracts, where the cleanup is on the employee's time after the whistle blows and they go to lunch?

A. I think there have been such plants in the past: whether they exist now, I don't know.

Q. (By Mr. Lamb) So that in the situation that you are describing as the general practice of allowing the employees from 11:55 to 12:00 to clean up, they are paid to 12:00, are they not?

A. That is correct.

Q. And this five minutes is merely a clean-up period that permits the employees to stop the actual productive work and put their tools in place and possibly clean up and get ready to leave, is that correct?

A. That is correct.

The Master: May I ask this: In the hypothetical case I mentioned a few minutes ago where the shift begins at 7 o'clock, the time clock is 100 feet from the place where the employees begin work, and the whistle blows at 7 o'clock sharp, is the practice to require the employee to be at his position of work at 7 o'clock, or to punch the time clock in at 7 o'clock?

A. The employees in most plants will be allowed to come in as much as a half-hour before the whistle blows for the actual beginning of work on the shift. They will come in, say, at 6:30. They will stand around, in some cases smoking cigarets and gossiping. They will take their coats off, punch their time clock. The punching of the time clock is immaterial in determining the exact beginning of work for them. But at 7 o'clock their pay period starts, although at 7 o'clock in many cases they may not be immediately at their machines.

In the same way, during the day there will be periods when the men will move away from the machines for various reasons.

The Master: Well, I understand that.

A. And he is paid for that period.

The Master: But I was thinking of this precise instance: we will say it takes 2 minutes to get from the time clock to the place of work in the morning. If the employee gets in at 7 o'clock, punches the time card a few seconds before the whistle blows, gets over to his place of work at 7:02—in other words, is the practice to have them punch the time clock by the time the whistle blows, or to be at his place of work or else doing other duties around the place, ready to do other duties around the plant at the time the whistle blows?

A. The punching in is simply employed primarily to

indicate the presence of the worker in the plant for that day. It doesn't bear a direct relationship to the actual starting time of his shift. If the worker is punched in and is in his own department, it will be assumed that he starts to work at 7 o'clock, even though actually he may not be at the machine at that time.

The Master: But he is supposed to be in his department at that time?

A. That is my understanding.

Q. (By Mr. Lamb) Your reference to the punching in is with reference to those plants where the employee is permitted, for instance, to go to his time clock, or go to the cloak room or smoke or relax—

A. (Interrupting) After he has punched in.

Q. (Continuing) —between the time of the punching in and the time of the work?

A. That is correct.

Q. And has no reference to the place where an employee punches in and goes directly to work on productive labor immediately upon punching the time clock?

A. There is usually—

Mr. Nunneley (Interposing) We will object to his cross-examining his own witness.

Mr. Lamb: I am not.

The Master: I will take the answer. It might be objected to as leading.

Mr. Nunneley: Very leading.

The Master: I have sometimes permitted leading questions. I will let the witness answer in his own way.

A. The principle there that is in the generality of these plants, the actual punching of the clock will not coincide with the starting of work. The man will punch his clock, will stand around as I have suggested. But the productive work itself will begin according to the shift schedule, and the man is therefore paid according to the shift schedule itself. If I may refer to the practice at Packard, there you do have an exception.

Mr. Cooper: Excuse me, is that Packard?

The Master: Packard, yes.

A. Packard Motor Company. There the men are paid as soon as they actually start to work, whether that may be a few minutes before 7 o'clock or a few minutes after 7 o'clock.

Q. (By Mr. Lamb) I am referring again to the matter of your testimony with reference to the time clock being a record of attendance and not being a record of working time applies only to those plants where the employee is not required to go directly to work after punching the time clock?

A. That is correct.

Q. "And where the time clock indicates the time of arrival, where the employee is prepared to and does go to work, then I want the custom as to the payment for the time worked in reference to the time clock in such case.

A. In that case the pay would begin immediately following the punching of the clock.

The Master: In this Packard plant you say the employees are paid from the time they commence work even if it is before the time the whistle blows?

A. That is correct.

The Master: How is it determined as to the time they do commence work?

A. I understand that is a case where the time clock is established in the department so that the worker can punch the clock to indicate when his work starts.

The Master: They have a time clock right in the department?

A. That is right.

The Master: Do they also have a time clock at the door which he first punches?

A. No, not in that case.

The Master: And when the workman will get in in the morning, will he proceed immediately to work, or will he wait for instructions from the foreman to show when he is to start work?

A. I am not familiar enough with the practice to give

an answer to that question that I would have confidence in.

The Master: I don't suppose it is a situation where the employee can come in at any time in the morning and go immediately to work regardless of whether the plant is ready to have him start or not?

A. That is a fact. It is a question of a minute or two leeway one way or the other around 7 o'clock.

Q. (By Mr. Lamb) I assume in the Packard plant there may be hundreds, or even thousands, of men, are there not?

A. That is correct. • • •

Cross Examination

By Mr. Nunneley:

Q. Mr. Wishart, you of course have never been to the plant of the Mt. Clemens Pottery Company, have you?

A. No, sir, I haven't had that privilege.

Q. And you have never been, or have you ever been in any other dinner ware manufacturing plant?

A. I have been through a number of them some years ago; I can't claim familiarity with your personal practices, however.

Q. Do the companies in this area ordinarily get out printed booklets which have their shop rules, and so on, in them, Mr. Wishart?

A. A number of companies do.

Q. And you are familiar with those, are you?

A. I am familiar with some of them, though those are not matters of collective agreement usually.

Q. No, but you do know as a matter of fact the companies quite generally circulate among employees such things, do you not?

A. Shop rules are sometimes circulated to employees, that is correct.

Q. And I suppose in the course of your research work you know what the practices and so on are; you have become familiar with booklets?

A. We have looked at some of them.

Q. I will show you a booklet that has been marked Defendants' Exhibit 66, and ask you if you can tell us what that is (handing booklet to the witness)?

Mr. Lamb: Objection. This witness can't identify that.

The Master: On cross-examination he can ask him whether he has seen it before.

Q. (By Mr. Nunneley) You have seen it? • • •

A. I haven't seen this particular copy before. As I remember it, the copy of the agreement at the Budd Wheel Company which we have in our files is a mimeograph reproduction of collective bargaining agreements.

• • •

Q. (By Mr. Nunneley) Is that document, Exhibit 66, I believe it is, the type of document at least that is quite commonly circulated among people as representing collective bargaining agreements and shop rules? • • •

A. It has the appearance of being of a similar type, yes. • • •

Q. I presume if requested you could make a comparison for us and ascertain whether this is a correct copy?

A. I could make a comparison to ascertain whether the contract as printed there was a correct copy of the contract. I would not at the present time have the material to check on the shop rules, which in this case have been printed along with the contract. • • •

Q. It is a fact, however, isn't it, Mr. Wishart, that there are generally circulated among employees and among persons who might be interested in labor relations, booklets which at least purport to contain the contracts and shop rules of quite a large number of companies, isn't that right?

A. That is correct. • • •

Q. (By Mr. Nunneley) I will show you booklets that are marked Exhibits 66, 67, 68, 69, 70, 71, and 72, and ask you if those are such booklets as you have just been describing to the Master (handing exhibits to witness)?

• • •

A. From the appearance of these books, I would assume that they represent a statement of company policies. • • •

The Master: Pardon me, what is this statement that you have here, this typewritten matter?

Mr. Lamb: That was prepared for me.

A. This is just notes for my own memory in regard to running practices.

Mr. Lamb: He got this up for me.

The Master: I am quite interested in this question of the general practices in industry.

Mr. Nunneley: Under the circumstances, may we see it?

Mr. Lamb: Not particularly.

The Master: I beg your pardon?

Mr. Lamb: He asked whether under the circumstances they may see it. I asked Mr. Wishart to get up some notes so that I could question him on it when he testified.

I don't think I care to introduce it particularly, because it is more or less question and answer form.

The Master: I noticed he was referring to it in his examination.

Mr. Lamb: That is right.

The Master: I thought there might be something in there that would be helpful on the subject. Has everything been covered that is in your notes there?

Mr. Lamb: Here is one, Local 155 Amalgamated Local Union, would you want to read your notes on that?

The Master: Were these notes made based on your recollection of practices?

A. They were made on the basis of recent conversations with business agents, officers, and committee men from these local unions, and I had them with me primarily for the purpose of refreshing my memory in regard to certain basic points.

Mr. Nunneley: Conversations over what period of time, Mr. Wishart?

A. The last week.

Mr. Lamb: Can you advise us about the Local 155, Amalgamated Local Union having jobbing foundries and small parts plants similar to the Mt. Clemens Pottery plant?

A. Local 155 is an amalgamated tool and die local; including a number of production shops, a certain number of foundries. The report we had as the basis of our investigations indicates that in not one plant of this local is there a situation in any way analogous to that which I have heard referred to in the Mt. Clemens Pottery.

Mr. Nunneley: We object to that. We don't know what he has heard referred to.

The Master: I don't think he can testify that way.

Mr. Lamb: Do they get paid for every minute they work?

The Master: You can testify to what the practice is, but since you aren't familiar with the practice in the Mt. Clemens Pottery Company, you can't compare the two.

A. That is correct. There the universal practice, and I took this as random practice, if the regular starting time is 7 and the company calls in its workers at 6:30, they got time and a half for that half hour worked. This provision itself is included in 90 per cent of the agreements.

Mr. Lamb: That is, that they get paid for the minutes that they work?

A. That is right.

The Master: And they get time and a half under the agreements, regardless whether they are working overtime under the wage and hour act?

A. That is right. * * *

CHARLES E. DOLL, SR., thereupon resumed the stand as a witness herein, and being previously sworn, testified as follows:

Re-Direct Examination (Continued)

By Mr. Cooper:

Q. What is your recollection, if any, Mr. Doll, of any Circuit Court proceedings in the Macomb County Circuit Court in January of this year involving Local 1083?

Mr. Lamb: Objection. • • •

The Master: Well, I don't see the materiality of that on the point you are raising. I will sustain the objection.

Mr. Nunneley: Mark this, please.

(A document was then marked Defendant's Exhibit 112.) • • •

Mr. Nunneley: We offer to show, to prove by competent testimony in this case, that in May of 1941 a suit was brought by the Mt. Clemens Pottery Company, a Michigan corporation, plaintiff, against the United Pottery Workers, a labor union affiliated with the Congress of Industrial Organization; Steve Anderson, president of said union; Floyd Pearl, vice-president of said union; Lillian Socia, financial-secretary of said union; Margaret Yokum, recording-secretary of said union; Severino S. Pollo, Organizer for Congress of Industrial Organizations; August Scholle, Regional Director, Congress of Industrial Organizations; Frank Settle, Organizer, Congress of Industrial Organizations; George Foster, Organizer, Congress of Industrial Organizations, defendants, being cause No. 12066 in the Circuit Court for the County of Macomb, in chancery, in which cause it was charged that the defendants and their members were interfering with the employees of the plaintiff and with persons who desired to enter the employ of the plaintiff by way of threats, personal violence, intimidation, and in

other illegal manners; that they were interfering with the free access, ingress and egress of the employees of the plaintiff or the public—when I say "plaintiff" I am referring to the plaintiff in the chancery case out there—that they were gathering in large crowds in the neighborhood and preventing people from entering the plant, and that they were preventing deliveries of goods to the plant, and the entrance to the plant by persons having business therein by obstructing highways, sidewalks, railroad sidings, and other ways leading to it; that they were congregating upon and blocking the railroad tracks of the Grand Trunk Railway Company leading into the plant; and that they were blocking and interfering with the highways leading into the plant; and that a temporary injunction was issued restraining the defendants, being the plaintiff union in this case, and the named defendants, some of whom are here, together with all members of the organization, from doing those things, a temporary injunction was issued, which injunction was later made permanent by the Circuit Court for the County of Macomb, in chancery, by a decree issued on the 22nd day of January, 1942, which decree has been marked for identification here as Defendant's Exhibit 112, and which decree we now offer in evidence, being a copy of the decree, bearing the seal of the court.

The Master: Well, I don't think it is material in this case, and I will exclude it.

Q. (By Mr. Cooper) What is your knowledge, if any, Mr. Doll, concerning charges filed by Local 1083 with the National Labor Relations Board against the Mt. Clemens Pottery Company in April of this year?

Mr. Lamb: Objection.

The Master: He may answer.

A. It is my understanding that after this Local 1083 called off the strike of November 24th on about March 16, 1942, that they filed charges with the NLRB because they were not all immediately put back to work.

Q. (By Mr. Cooper) What is your recollection, Mr. Doll, as to whether or not prior to this strike of April

14, 1941, Local 1083 served upon the company any advance written notice?

Mr. Lamb: Objection.

The Master: We are not going into the question of the propriety of the strike, and you have already asked him about any demands made in connection with wages and hours, and he has answered that. I will sustain the objection.

Q. (By Mr. Cooper) What is your recollection, if any, Mr. Doll, as to acts of violence committed by Local 1083 and its members during the strike which started April 14, 1941?

Mr. Lamb: Objection.

The Master: Sustained. If I permitted that, we would be in another several weeks' investigation.

Mr. Nunneley: If the Court please, may we make the offer of proof covering these things?

The Master: Yes.

Mr. Nunneley: On behalf of the defendants in this case and for the purpose of affecting the credibility of the witnesses, establishing the motives of the plaintiffs and establishing a conspiracy to harass and annoy this defendant, we offer to show by competent testimony in this case that during the fall of 1940 the CIO Local 1083 filed charges of union discrimination at the Detroit office of the National Labor Relations Board.

That on April 14, 1941, the plaintiff union called a strike without the legal notice required by the laws of Michigan, gave no reason and made no demands, which said strike was called for the purpose of furthering an organizational drive.

That on April 16, 1941, as the record shows, they started this suit.

We further offer to show that during the strike of April 14, 1941, the plaintiff union and its members, including many of the persons designated as plaintiffs and persons whom the union represents in this case, resorted to a series of unlawful acts intending to coerce and in-

timidate both the employees of the defendant who did not belong to the union, and the employer, Mt. Clemens Pottery Company.

That a considerable number of the plaintiffs in this case, including in the plaintiffs the designated persons represented by the Union, were convicted of crimes growing out of and in connection with violence perpetrated upon the employees of the Mt. Clemens Pottery Company who did not belong to the union, in their attempt to coerce said employees and the employer.

That in addition there, an injunction was issued by the Circuit Court for the County of Macomb, and the Governor of the State of Michigan found it necessary to send state troops to Mt. Clemens to preserve order and to protect the plant of the employer against the violence and coercion and intimidation being practiced by the plaintiff union in this case and its members, including many of the desigated people who are here.

That on May 12 the plaintiff union called off its strike after it became public knowledge that there were only a small minority— • • •

The Master: Go ahead.

Mr. Nunneley: May 12, 1941, the plaintiff union, Local 1083, called off its strike after it became public knowledge that they were only a small minority, and that being in fact only a small minority, and after a collective bargaining agreement had been made with another organization, and that all of the members of the plaintiff union and of the designated plaintiffs who so desired went back to work at the Mt. Clemens Pottery at that time;

That in the course of that proceedings, in the course of that strike, this plaintiff union refused to be a party to a National Labor Relations Board election;

That on July 2, 1941, a number of the designated plaintiffs, persons represented here, conspired to stage a walkout at the Mt. Clemens Pottery and secretly shut off the power on the glost belt, five of them walking out at that time, the remaining employees remained at their jobs;

That on August 28, 1941, the plaintiff union in this case served a notice to strike on the Mt. Clemens Pottery Company;

That in September of 1941 the plaintiff union took a strike vote, not revealing in their minutes or otherwise how many were present at their meeting, or how many voted, one way or the other, in connection with it;

That on November 21, 1941, the complaining union, including several of the designated plaintiffs in this case, made plans to cause a walkout at 4 o'clock in the afternoon and that some of the conspirators, including the vice-president of the union, shut off the power and walked out of the plant, only a small number, however, walking out at that time—some five people. We offer to show by competent testimony that on November 24, 1941, plaintiff union, including many of the designated plaintiffs, called a second strike and again engaged in unlawful acts for which many of their members were convicted in court, fined, and for which an additional very considerable number were convicted for contempt of court for violating the injunction of the Circuit Court for the County of Macomb;

That on November 24, 1941, the Governor of Michigan again found it necessary to send state troops to Mt. Clemens to protect a large number of employees desiring to work at the Mt. Clemens Pottery Company against violence, and that with the protection of the state troops the employees were able to continue their work and that the plant was not closed and production did not cease.

We are prepared to show, and offer to show, that during the strike of April 14, to May 13, 1941, members of Local 1083, the charging union, and other CIO members, picketed various stores of the S. S. Kresge Company in Mt. Clemens, Detroit, Pontiac, and elsewhere, in an attempt to injure and interfere with the business of the S. S. Kresge Company that pressure might be brought to bear upon the Mt. Clemens Pottery Company, and that also during the strike beginning November 24, 1941, and especially during December, 1941, and January, 1942,

members of Local 1083, including some of the designated claimants in this case, and other various CIO members, picketed various stores of the S. S. Kresge Company in Detroit, Pontiac, and elsewhere, stopped freight deliveries, and interfered with the lawful flow of business; and, in addition, committed acts of violence and destruction of property, distributed circulars containing untruths and libelous statements, all being done for the purpose of injuring the business of the S. S. Kresge Company for the purpose of bringing pressure to bear and causing said company to coerce and intimidate the Mt. Clemens Pottery Company.

That is all. * * *

(A photostat was then marked as a copy of Defendants' Exhibit 84.)

(Inspection field Letter No. 27 of the Wage and Hour Division was then marked Defendants' Exhibit 113.)

Mr. Cooper: I offer in evidence, if the Court please, the document which has been marked as Exhibit 113, a copy of inspection field letter No. 27 of the Wage and Hour Division of the United States Department of Labor, bearing the notation on the bottom over the signature of L. Metcalf Walling, Administrator of the Wage and Hour Division, certifying it as a correct copy.

The Master: Show it to counsel.

(Exhibit handed to Mr. Lamb.)

Mr. Lamb: There is an objection to it, it being immaterial. * * *

The Master: Well, I think it is probably correct. I will admit the document, subject to checking, and if any error appears in it, why, it will be corrected, or if it is found there was no such letter ever issued, then it will be subject to being stricken from the record.

Mr. Cooper: And I offer in evidence, if the Court please, the document which has been marked for identification as Exhibit 64, and which was produced here in court in response to the court's direction that the plaintiff

Local 1083, United Pottery Workers of America, produce in court its constitution and by-laws, and particularly that portion of the exhibit—well, I am offering it all and directing particular attention to Article IV of the constitution.

Mr. Lamb: Objection.

The Master: Well, again, I will admit it in evidence subject to argument as to its legal effect.

Mr. Nunneley: Mr. Charles Doll, Jr.

CHARLES E. DOLL, JR., was recalled as a witness on behalf of the defendants, and being previously sworn, testified further as follows:

Re-Direct Examination

By Mr. Nunneley:

Q. (By Mr. Nunneley) Mr. Doll, did you regularly start the glost belt for production purposes before the established starting time in the morning?

A. No.

Q. Did anybody else regularly start the glost belt for production purposes before the established starting time in the morning?

A. No, sir.

Mr. Nunneley: Take the witness.

Re-Cross Examination

By Mr. Lamb:

Q. Didn't you stand at the end of the glost belt, Mr. Doll, and when the men had punched their time clocks and passed through, didn't you start the belt immediately 14 minutes of 7:00?

A. No, sir.

Q. Is that your sworn testimony?

A. Absolutely. • • •

Mr. Nunneley: If the Court please, subject—your Honor hasn't ruled yet on the matter of the booklets.

The Master: I don't know that I am going to rule on that at this time. I am going to think that over.

Mr. Nunneley: We might have to reopen the proofs, or open the proofs. That is the point in connection with that. If the ruling is such that we have to reopen, we don't want to be in a position of having rested our case.

The Master: You rest subject to that one question. If I decide you have to get those exhibits identified, why, you will have the opportunity to present the proofs on that. • • •

STEVE ANDERSON, was thereupon recalled as a witness on behalf of the Plaintiffs in rebuttal, and being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Lamb:

Q. Mr. Steve Anderson, you were sworn when you testified on direct examination here, were you not?

A. Yes.

Q. Mr. Anderson, have you seen Mr. Charles E. Doll, Junior, start the ghost belt before 7 o'clock?

Mr. Cooper: Objection.

A. No.

Mr. Nunneley: Object to that as not the proper method of redirect. • • •

The Master: I will get Mr. Anderson's testimony on it.

A. I have seen Mr. Doll standing there, but I have

never seen him start the belt. It most generally was started when I came in.

Q. (By Mr. Lamb) When you came in at 14 minutes of 7, the glost belt was already in operation?

A. Yes, sir.

Mr. Nunneley: We object to that as leading.

The Master: When was the glost belt started—or did you ever see the glost belt start?

A. No, I didn't see anybody actually start it, no. I seen the belt running.

The Master: What did you observe with respect to the glost belt?

A. I used to go right by the glost belt when I came in to work, and it was generally running.

Q. (By Mr. Lamb) And you came in at 14 or 13 minutes to 7 and found the glost belt running?

A. Yes.

Mr. Nunneley: Objection. It is leading.

The Master: That is leading.

Mr. Lamb: That is what he said.

The Master: He said when he came in he saw the glost belt running. You can ask him what time he came in.

Q. Okay, what time did you generally come in there?

A. Different times. Sometimes I came in at 31 or 32, like that; 6:31, 6:32. Then other mornings it would probably be 14 minutes to the hour, 12 minutes to the hour.

The Master: Was it running when you came in at 6:31 or 6:32?

A. Yes, on different occasions it was, yes.

The Master: Sometimes it was and sometimes it was not?

A. Well, I came in at different times. When I came in, it was most generally running.

The Master: And then other times it was not running?

A. Well, I don't know. I never noticed when it wasn't running.

Q. (By Mr. Lamb) Now, were you given instructions or advised as to whether or not you were given instructions to report and go to work prior to the so called 7 o'clock shift?

Mr. Nunneley: Now, we make the same objection. Are we going to reopen the whole subject? That's all matters of their main case. Are they going to be permitted to come into this court and put on proof by their witnesses and rest, and then start all over again and leave us that way?

The Master: Well, at the risk of reaffirming what he has already testified to, I will permit you to ask him, but don't ask it in a leading form. Ask what the instructions were.

Mr. Lamb: All right.

Q. (By Mr. Lamb) What were the instructions—

Mr. Nunneley: May we have an objection to it all?

The Master: Yes.

Q. (By Mr. Lamb) What were your instructions relative to punching in your time clock and going to work in the morning?

A. The foreman used to tell me to come in at a certain time and punch in and go right at work.

Q. And did you do that?

Mr. Cooper: Objection.

A. Yes.

The Master: Same ruling.

Q. Did the other employees of the Mt. Clemens Pottery Company—

Mr. Cooper: Object to it.

Q. (Continuing) —punch in and go directly to work?

Mr. Cooper: Same objection.

The Master: As far as you observed.

A. As far as I observed, they did, yes.

Q. And that is without reference to waiting until a subsequent so-called starting time of 7 o'clock?

Mr. Cooper: Objection to the form of that as leading.

The Master: That is leading. No question about it.

Mr. Lamb: All right.

Q. (By Mr. Lamb) Can you advise us whether or not the employees that you observed of the Mt. Clemens Pottery Company did proceed to work immediately after punching the time clock without waiting for the 7 o'clock shift?

Mr. Nunneley: They are just reopening the whole lawsuit again.

Mr. Cooper: Same objection.

The Master: That is a leading question. If you want to ask him what he observed with regard to employees going to work, all right.

Mr. Nunneley: That is simply reopening the whole case.

Q. (By Mr. Lamb) Can you tell us what you observed with reference to the other employees?

A. Well, I observed people punch in their clocks and went in and went to work, went right to work.

Q. Without waiting for the subsequent 7 o'clock time?

Mr. Cooper: Objection.

The Master: That is leading. I will sustain the objection.

Mr. Nunneley: Move it be stricken.

Q. (By Mr. Lamb) Tell us what you observed with reference to employees going to work without waiting for the 7 o'clock shift, for instance?

Mr. Cooper: Objection.

The Master: That is leading. I think your questions there almost all fall into the same leading category.

Q. Can you tell us what you observed with respect to their going to work, Mr. Anderson?

A. Well, there was no 7 o'clock as far as that goes. We went right in, went in and punched the clocks, and walked right in and went to work. We didn't wait for any whistle.

Mr. Cooper: Move that the answer be stricken as embracing conclusions and going way beyond matters of observation.

A. I said as far as I was concerned.

Q. And as far as you observed—

The Master: (Interposing). I will let it stand.

Q. —other employees, was that practice followed by other employees you observed?

Mr. Cooper: I object to that as leading, and simply suggesting the answer.

Q. Tell us what you observed with reference to whether employees, then, Mr. Anderson, in that respect?

A. Well, all the other employees—

Mr. Cooper: Objection unless he names the employees or gives us some idea who he is talking about.

The Master: What group of workers were you in a position to observe in the morning?

A. You mean the departments?

The Master: Yes.

A. The dipping house and glost belt.

The Master: Could you observe the time that all the others went to work, what they did, in the whole plant?

A. Well, the glost belt was generally working when we came in, and the dipping house I could see about all of them.

The Master: You mean at 14 minutes to 7 everybody in the glost belt department was working?

A. I don't know exactly 14 minutes to 7. On certain mornings it would probably be 14 minutes to 7, and other mornings, if they came in at 6:31, they would be working before 14 minutes to 7.

The Master: Were you in a position where you could observe the glost belt department as to the number or proportion of employees that were there, and what they were doing, and so forth?

A. Yes.

The Master: And what other departments could you observe?

A. The dipping house, brushing.

The Master: Was that your department?

A. And the chipping belt. I would go right by those departments.

The Master: Well, you may state what you observed.

Mr. Nunneley: Same objection, that it is improper rebuttal.

The Master: I will let him answer.

A. Well, lots of mornings I would see the fellows from the glost belt come back from unloading cars, with their cards in their pockets, and they would go up and punch the time clock and go back in again. And then—

Mr. Nunneley: I move it be stricken. Improper rebuttal, coming after the defendants' case.

The Master: I will take a recess right now and look up this question of the scope of rebuttal proof. • • •

The Master: Well, exercising my discretion—I think I have discretion on it—I will permit that question to be asked and answered by the witness.

Q. (By Mr. Lamb) Mr. Anderson, will you advise us what you observed with respect to other employees punching their time clock going to work?

Mr. Cooper: Same objection.

The Master: Same ruling. Answer.

A. Well, they punched their time clocks and went right in to work right away, started work.

The Master: And what employees, now, did you have the opportunity to observe?

A. Oh, employees on the glost belt, employees on the chipping belt, and employees in the brushing department, dipping department.

Q. (By Mr. Lamb) Bisque belt?

A. Yes. Most of the employees on the bisque belt.

Q. Mr. Anderson, did you ever take time to dawdle or delay between the time you punched the time clock and the time you went into production work?

Mr. Cooper: Objection. • • •

The Master: Well, I don't know. At the risk of reiteration, and that is the only risk involved, I will let him answer the question.

Mr. Lamb: What is your answer to the question, Mr. Anderson?

Mr. Nunneley: It is prejudicial to us to have the record figured up that way. That is all.

The Master: If he just says the same thing twice, once on direct and once on rebuttal, I don't see how it prejudices you particularly. You still have just the two different versions in the record. That is the most prejudice that could be involved in forbidding this, and it is a very slight prejudice, I would think.

A. I have forgotten what the question is.

The Master: The question is as to how you proceeded from the time clock to this department.

A. I punched the clock and hurried right in to work.

Q. (By Mr. Lamb) Did you delay, take any time off to dawdle or talk?

Mr. Cooper: Objection.

Q. Or smoke, or gossip, or anything else?

Mr. Cooper: Leading question.

A. No, I never did.

Mr. Cooper: I move the answer be stricken as purely leading.

The Master: I think it is all right. Overruled.

Mr. Lamb: That is all the rebuttal from this witness.

Re Cross Examination

By Mr. Nuttneley:

Q. Steve, you never passed the time of day with any of the boys as you went from the time clock to work, is that right?

A. No. We had plenty of time to do that in the bull pen.

Q. Before you got there. I did not ask you that. I said you never passed the time of day with any of the boys as you went from the time clock to work?

A. Oh, I probably generally walked along with somebody and talked, sure. It is natural.

The Master: Wouldn't you ever stop and somebody caught a big fish, and you caught one the day before, and say anything to them or discuss trivial matters of that sort.

A. No, I don't think I ever did.

The Master: Make a beeline right for the department as soon as you got in?

A. Yes. You wanted to be in there or the boss would want to know the reason why. • • •

FLOYD E. PEARL, was called as a witness on behalf of the plaintiffs, in rebuttal, and having been first duly sworn, testified as follows:

By Mr. Lamb:

Q. What is your residence address, Mr. Pearl?

A. 200 Hubbard Avenue, Mt. Clemens, Michigan.

Q. You were formerly an employee of the Mt. Clemens Pottery Company?

A. Yes, sir, I was.

Q. Can you tell us for how long?

A. 17 years.

Q. 17 years. Up to approximately what time?

A. November 21.

Q. 1941?

A. Yes, sir.

Q. That is when your employment was terminated?

A. That is right.

Q. Tell us whether or not it was terminated because you insisted on stopping work at 4 o'clock.

Mr. Cooper: Objection.

The Master: That is leading. You will have to ask why it was. • • •

The Master: You say you were discharged in November of 1941, if that is the date?

A. Yes, sir, November 21.

The Master: And were you given a reason by your superiors at the time you were discharged?

A. The one that was told to me—

The Master: Were you given a reason? Can you say? I just want to find out.

A. Well, he said I was all washed up, in other words, I didn't work there no more.

The Master: Did he tell you why?

A. Well, he mentioned I wouldn't work after four o'clock on Friday night, the night before.

The Master: The only way I can see this question might be material is that there is a question as to whether or not the employees ever made any complaints or acquiesced in the practices of the Mt. Clemens Pottery Company. Many of the plaintiffs have testified they didn't make any complaints about the manner of computing the time because they were afraid they would get fired. Now, in answer to that, you have produced some evidence to the effect that employees who complained about the practices never did get fired.

Mr. Nunneley: I think perhaps I know something about the circumstances. I know what this will all lead to because I have been through the mill in it before along with Mr. Pearl. And it will mean, of course, if we are going into the question of what happened on November 21, the whole string of proof, the whole long string of proof, along the line of our proving that, in the first place, that there is no question of the 40 hours involved in Mr. Pearl's case because, as a matter of fact, the request to work over and past 4 o'clock was a request to work past 4 o'clock, made on a Friday, when the pay week, as your Honor knows, starts on Wednesday. In addition to that, it was the day after Thanksgiving, on which they hadn't worked at all, so that there is no question of the 40 hours, under any computation or anybody's method of computation, there was no question of that involved here.

The Master: Well, can't you bring that out without going into that whole question?

Mr. Nunneley: I don't see how we can. We will be opening the door to the whole thing. We will just have to

try the whole thing all over again because we will have to bring out all those facts. • • •

Mr. Lamb: I don't care too much about proceeding with this line. I introduced this witness purely as rebuttal to a statement that was made.

The Master: It seems to me the facts that you have brought out are not disputed by him, Mr. Nunneley.

Mr. Nunneley: I don't know whether they are or not. There may be some more to it.

Mr. Lamb: Well, there won't be any more to it if I don't ask any more questions along that line.

The Master: All right.

Q. (By Mr. Lamb) Can you advise us whether you ever have observed Mr. Charles E. Doll, Jr., start the glost belt before 7 o'clock?

A. Yes, sir, always.

Mr. Nunneley: Now, if the Court please, we object to that as improper rebuttal.

Mr. Lamb: Mr. Charles E. Doll, Jr., said he didn't and this witness said he always did and he seen him do it.

The Master: I will make the same ruling as I did relative to Mr. Anderson. I am going to permit this testimony. • • •

A. Charles E. Doll, Jr., always started the belt before the first strike and he shut the belt off in the evenings.

Q. (By Mr. Lamb): And that was before 7 o'clock? That was the question.

A. Yes, sir.

Mr. Nunneley: I move to strike, as that is leading and suggestive.

The Master: At what time did he start the belt?

A. He started the belt in the morning in the year 1940 and part of '41, we used to have to go in at 6:30 in the morning and work until 16 minutes to 7:00 and then go out in front and wait around until 14 minutes to 7:00, punch our time card, and Mr. Doll would be standing on the end of the glost belt, and when he would see us coming in he would start the belt up, and by the time you got

there everything was working, right in front of us, and if we wouldn't run, why, he was standing right there and saying, "Come on and let's go."

Mr. Lamb: Let the record indicate the witness waved his arms when he said, copying Mr. Charles E. Doll, Jr.'s motion, "Come on, let's go."

Q. (By Mr. Lamb) Do I take it that you have worked in the morning between 6:31 and 6:46 before your time clock card was punched?

A. Yes, sir.

Mr. Nunneley: Improper rebuttal.

Mr. Cooper: Objection as leading.

The Master: It is all leading. • • •

Mr. Nunneley: Move it be stricken.

The Master: I will strike the answer and sustain the objection on the ground it was leading.

Q. (By Mr. Lamb) Can you advise us whether you ever worked before your time card was punched?

Mr. Nunneley: We object to it as being improper rebuttal, being matters entirely covered in the main case, or should have been, and is not now the time to bring it in here. • • •

The Master: I think I do. I think I will let him testify on it. I am exercising my discretion and permitting it.

A. Yes, sir, a good many times.

Q. (By Mr. Lamb) That was prior to April, 1941?

A. Yes, sir.

Q. Excuse me, I did not ask you what department you worked in, I think.

A. In the glost belt.

Q. Glost belt?

Mr. Nunneley: We have the objection to all the testimony of this witness.

The Master: I understand that.

Q. Now, Mr. Pearl, will you advise us the method by which you proceeded from the place where you punched the time clock to your activities, production activities?

Mr. Nunneley: Same objection.

The Master: Same ruling.

A. We would punch our card at 14 minutes to 7:00 and go directly right to our job, and by the time we got there the belt would be running, started by Charles Doll.

Q. Junior?

A. Junior.

Q. Did you ever take time out or delay between the time you punched the time clock and the time you went into production?

Mr. Cooper: Further objection as purely leading.

The Master: Sustained.

Mr. Nunneley: Not proper rebuttal.

Q. (By Mr. Lamb) Tell us the method by which you proceeded.

Mr. Cooper: Same objection.

Q. The speed with which you proceeded from the time clock card—from the time you punched the time clock card to your productive work.

Mr. Cooper: Same objection. If the Court please, asking a purely leading question which states an answer, and having it ruled out, and asking the same question over again I think is subject to the same objection as leading.

Mr. Lamb: The other objection was to the question I asked him whether or not he delayed or whether he ran.

The Master: How did you proceed? That was as little leading as it can be phrased.

A. Well, when we punched our card at 14 minutes to 7:00 we would have to run to get in there. If we didn't Charles Doll, Jr., would be standing on the end of the belt, and would be waving his hands for us to hurry up, "Come on, let's go." It would take us from the time clock to the glost belt would be about 200, 250 feet, and we would get up there and make it in about a half-minute and be on the job.

Q. Can you advise us whether there have been any strikes at the Mt. Clemens Pottery Company in the last month and a half?

Mr. Cooper: Objection.

The Master: Upon what ground do you object to that? That question was gone into.

Mr. Nunneley: It is all right with us.

Mr. Cooper: It goes 'way beyond any period we had, I think.

The Master: You asked him about strikes right down to the present time.

A. I know of three in the last month and a half, departmental walkouts caused by a cut in wages.

Mr. Cooper: Object to the last part of the answer and move it be stricken.

The Master: I will strike the last part. I have been avoiding the question of the cause of these strikes. • • •

Q. (By Mr. Lamb) Can you advise us whether your time clock was ever punched out at 3:29 in the afternoon and in at 3:31?

A. Yes, a good many times.

Q. Can you tell us the purpose of that?

Mr. Cooper: Objection. It calls for a conclusion.

Q. Or the occasion for that.

The Master: Well, what happened on that occasion?

A. Well, on that occasion it would be on Monday and Tuesday, because the end of the week would be on Tuesday night, and we would have an hour—it would make an hour over 40 hours. We would have to punch out at 3:29 and in again at 3:31. We would lose a half-hour that day Tuesday we would do the same thing again, so that we would lose one hour.

The Master: When was this done?

A. A good many times, in 1940, 1939 and 1941 we have done it already.

Q. (By Mr. Lamb) Which time clock did you use, the one at the north or the south?

A. South, the miscellaneous time clock.

Q. Tell us what you observed with references to the other employees punching the time clock and going immediately to production work.

Mr. Nunneley: We object, if the Court please; not proper rebuttal. • • •

The Master: He may answer.

Q. (By Mr. Lamb) Tell us your observation relative to what you saw other employees do with reference to punching the time clock and going into production work?

A. Well, they would punch their card and go directly to the job, because they would have to. The one I observed was on the glost belt. They would have to go directly to the job, because the belt was running and they was part of the production line and they would have to be there or the production shut down.

Q. Were you an hourly worker or piece-worker?

A. Piece-worker.

Q. You said you had worked there approximately 17 years?

A. About that, yes, sir.

Q. What kind of a title or what specific type of work did you do?

A. Glost unloading.

Mr. Lamb: That is all.

Cross Examination

By Mr. Nunneley:

Q. Mr. Pearl, you said there were three strikes at the Mt. Clemens Pottery in the last month?

A. I said departmental walkouts.

Q. Well, there wasn't any strikes, then?

A. Same thing.

Q. Same thing, walkouts and strikes are the same thing?

A. That is right.

Q. I see. Those are all matters which somebody has told you about, aren't they?

A. I got it pretty straight.

Q. I say, they are matters which somebody has told you about?

A. Yes, sir.

Q. You weren't present and saw any of them, were you?

A. I saw part of one, the first one.

Q. When was that? What was the date?

A. I can't tell you exactly the date, but I got home from work, and word was there for me to be at the pottery, and when I got there, they were just going back to work.

Q. They were just going back to work?

A. That is right.

Q. So that as a matter of fact all you know about whether there was any departmental walkouts at the Mt. Clemens Pottery in the last month is what somebody has told you; that is right, isn't it?

A. Yes, sir, what the department told me.

Mr. Nunneley: I move it all be stricken out.

The Master: It is hearsay. I will have to strike it.

Q. Now, Mr. Pearl, I will show you some papers that have been marked as Defendant's Exhibits 93 through 93-Y, and ask you if you know what those are?

A. These are the time cards.

Q. Whose?

A. Mine.

Q. Yours; all right. And now will you look them over and see if you can find one of those times when you punched out at 3:29 and in at 3:31 as you said a few minutes ago, will you, in the afternoon?

A. (Examining exhibits) That is not my card, I never used that (indicating).

The Master: Just for the record, to get this straight—

Mr. Nunneley (Interposing) They have already been offered and received in evidence.

The Master: The card he was referring to is Exhibit 93-Q.

A. There is none there that's got it. About all the cards, they ain't here that would be in there.

Q. (By Mr. Nunneley) If all the cards were here, they would be in there?

A. Yes, sir, but all the cards ain't here.

Mr. Nunneley: All right.

Q. (By Mr. Nunneley) At least none of the cards that are here, they didn't have it?

A. Naturally they wouldn't have them up here.

Mr. Nunneley: No, we wouldn't have them.

The Master: Let's see what you have up here.

Mr. Nunneley? We have all but the 41's. • • •

Q. (By Mr. Nunneley) Mr. Peark what makes you think that Exhibit 93-Q isn't yours?

A. I never punched a card only two times for two days, at no time while I was at the pottery. • • •

Mr. Nunneley: They have all been identified and received as I understand it, all of these.

The Master: I think they have, but apparently the date is either not marked on or—apparently what happened, the stamp for Floyd Pearl was put too high on the card for these two days, because, comparing it with the other stamps here, it would appear that the date would fall off the card on 93-P and 93-R. That is true of 93-R, I should say, but not of 93-P, because 93-P does not have a stamp, but simply "Floyd Pearl" written in in pencil.

That isn't your writing, is it, or is it?

A. I don't think so. I don't think I ever signed any cards unless I got it some time from Herman Miller, the watchman.

The Master: You can't tell whether it is your writing or not, your signature?

A. It looks something like my writing. It looks something like my writing. • • •

(Time clock cards of Floyd Pearl for 1939 and 1941 were marked Defendants' Exhibits 93-Z to 93-KK, inclusive.) • • •

Q. (By Mr. Nunneley) I show you Exhibits 93-Z, 93-AA, BB, CC, and DD, and ask you if those are some of your time cards for the dates that are on there?

A. Yes, but those dates—well, where is the rest of the cards? I said that was for them dates. Now, where is the rest of the cards?

Q. All right. Are there any of those cards which show that you punched out at 3:29 and in at 3:21 in the afternoon? • • •

A. Well, no, none of them cards.

Q. (By Mr. Nunneley) You did it during 1941 before

the first strike, didn't you?

Mr. Lamb: In the year 1941?

Mr. Nunneley: Before the first strike.

Mr. Lamb: During 1941?

The Master: 1941, yes.

Q. (By Mr. Nunneley) Before the first strike?

A. I wouldn't say for sure if they did or not.

Q. Well, I will show you the documents that are Exhibits 93-AA to 93-KK, and ask you if these are your time cards for the year 1941 up to the time of the first strike, being April 14, 1941?

A. Yes, sir.

Q. And you didn't do it during that period either, did you?

A. Not by the looks of them, no.

Q. You are vice president of the union, or were?

A. I was, and now I am president.

Q. Now you are president?

A. Yes, sir.

Mr. Nunneley: That is all.

The Master: Any more questions?

Re-Direct Examination

By Mr. Lamb:

Q. Have you seen the 1939 time clock cards, or what purported to be the 1939?

A. When he showed me part of them here, and the rest I didn't see, no.

Q. For July or August, 1939, have you seen any time clock cards?

A. No, sir.

Q. For April, 1939?

A. No, sir.

Q. Or February, 1939?

A. No, sir.

Q. Or January, 1939?

A. No, sir.

Q. Or December of 1938?

A. No, sir.

Mr. Nunneley: It is conceded that there aren't any cards in our possession for that time.

Q. Or November, 1938? Have you seen any time clock cards for that period, November, 1938?

A. No, sir, I didn't.

Mr. Lamb: That is all.

The Master: You are excused. • • •

CHARLES E. DOLL, SR., was thereupon recalled as a witness, being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Nunneley:

• • • •

Q. (By Mr. Nunneley) Mr. Doll, I show you these exhibits—I might as well have them all identified. It will be easier—Exhibits 93-EE, FF, GG, HH, II, JJ, KK. Whether or not those are time clock cards of Floyd Pearl for the period indicated thereon (handing exhibits to witness)?

A. Exhibits 93-EE to 93-KK, are the time clock cards of Floyd Pearl for the pays ending from January 14, 1941, to April 8, 1941.

The Master: Here are the others. I have sorted them out.

Q. And Exhibits 93-Z, 93-AA, BB, CC, and DD, whether or not they are the time clock cards of Floyd Pearl for the pay periods and the times indicated thereon?

A. Exhibits 93-Z to 93-DD are the time clock cards of Floyd Pearl for the pays ending November 14, 1939, to December 31, 1939.

Mr. Nunneley: We will offer the cards.

Mr. Lamb: Mr. Doll, do you have the cards for October, 1939, of Floyd Pearl?

A. We have previously testified that those cards are not available.

Mr. Lamb: I can't hear you.

A. I say we had previously advised you that those cards are not available. • • •

Mr. Lamb: Do you have the time clock cards of Floyd Pearl for the month of June and July of 1939?

A. We have not.

Mr. Lamb: Do you have any time cards for Floyd Pearl for the period from October 24, 1938, to June 1, 1938?

A. We do not.

Mr. Nunneley: That is all.

The Master: All right, you are excused.

(Witness excused.)

The Master: And these exhibits that have been offered under the general heading of Exhibit 93, will be admitted. • • •

Hearing on Exceptions to Master's Report, April 12, 1943

The Court: I don't expect to go into all of this, understand, but I would like to have in a general way what your objections are to the confirming of the report.

You can go right ahead.

Mr. Lamb: All right. The action, as your Honor will recall, was brought by the United Pottery Workers, CIO., and various employees named plaintiffs. The Court ordered that the action could proceed, but that there should be authorizations filed by individuals who sought to be represented by the named plaintiffs and the union.

Those authorizations, some 350 of them, were filed with the Clerk of this court.

We had considerable motions argued before your Honor as to the right of the Kresge Company to be dismissed as a defendant, and the Court denied that motion. Then, about a year ago the Court referred this to Mr. Quaife as a Special Master.

Mr. Quaife conducted hearings, and I think some 23 days of hearings were had, and some 3500 pages of transcript were taken. Then, the 1st of April, or middle of April, or March, Mr. Quaife made his report.

The Court: May I ask a question before you get into that? I have had so many of these I don't know whether this is the case I am thinking of or not.

Mr. Lamb: This is the case that has to do with the overtime.

The Court: Let me see if I remember it so that you will know whether or not I am on the right track.

Isn't this the case where it was claimed the workmen would get there at 7 o'clock, but they wouldn't get credit for being at work until 7:15, or 7:30?

Mr. Lamb: That is correct.

The Court: And then they would quit at 11:15, but they only got credit up to 11 o'clock? • • •

Mr. Lamb: That is the case: that the employees reported at 6:31 or 6:46 in the morning, and they were paid to the subsequent quarter hour, and then at noon they would go out at 11:14 and were paid to the preceding quarter hour, so that they were actually deprived of 56 minutes work time a day.

The Court: Almost an hour of time a day.

Mr. Lamb: Yes.

The Court: Now, may I ask this; was any testimony taken as to the length of time it took them to go from where they put their uniforms on—

Mr. Lamb: (Interposing) A great deal.

The Court: (Continuing) —whatever they had to put on?

Mr. Lamb: A great deal. The testimony is not disputed that the employees prepared themselves completely

for work prior to punching the time clock cards. There was testimony taken as to whether it was 200 feet or 100 feet to various work benches.

We held—and I ask the Court particularly to notice, that the decision which confirms our position, the Tennessee Coal & Iron case was decided after the Master's report, after the Master made his report, and that is a very important decision holding that the employee must be paid from portal to portal. • • •

The Circuit Court, the Fifth Circuit Court, held that these employees from the Tennessee Coal & Iron Company must be paid from portal to portal, and it is irrespective of how long it took to go from one work place to another; that that matter was in the direction and control of the employer, and the employer sent the employee to a particular work place around the premises.

And, the Court in that case confirmed a judgment of approximately $250,000 for those employees.

We have set that up, some references in that case, in our objections to the report.

The Court: All right, go ahead, now.

Mr. Lamb: Now, the time cards, it is undisputed in this case, are specific and show the time that the employees worked, with the exception that the Master holds that the time going to work from the time they punched the clocks is to be deducted, and the employees charged with the time and only given credit to the subsequent quarter hour; what he calls the starting time.

Now, the Master has given several findings of fact and several conclusions of law which are in direct conflict with that particular premise. He states that it will be a simple matter that if these time clock cards are accurately kept, that is, do reflect the time—page 54 of the Special Master's report—that in the case at bar that if the plaintiff's claims of 56 minutes extra work per day is well taken, the amount of time can be readily and precisely figured. The same is true if the contention that all of the punched time on the cards constituted employment time is correct. • • •

The Court: I know that. But, the main reason that

I sent this case down there was I couldn't believe that any company could do what is claimed they did in this case. It was just unbelievable to me. I can understand how, if it had to take them five to ten minutes to get dressed to get ready, that the company would make them get there in time. I can understand that. Because they are supposed to be ready to work. * * *

Mr. Nunneley: In view of the fact that we are just having an informal discussion we are not going to say very much now. After your Honor has read the record we will be very glad to argue the entire matter.

The Court: Briefly, what is your position?

Mr. Nunneley: Our position is that the facts do not bear out the assertions that Mr. Lamb has made here. He said we admit certain things, and I want to say right now that I don't know anything that has been admitted in this case by anybody, so that when he said we have admitted it, I don't know of a thing, and our contention is, to start with, that the facts do not bear out his assertions.

Your Honor has asked about the matter of the time, for instance. Let us say by way of illustration that the starting time of a given department in that plant is 7 o'clock in the morning. The people are not permitted to come by the time clock until 14 minutes to 7. That is where the 14 minutes come in. Nobody can come in before 14 minutes to 7. They are expected to be at their places and ready for work at 7 o'clock. That is the thing that is in this case.

There is no other method by which it could be done, probably, and have been there, excepting to get some of them prior to the actual starting time to go by the clock, because they can't go by the clock at one time.

The Court: They could come in at 5 minutes to, if they want to.

Mr. Nunneley: Correct. They could come in at 5 minutes to; they could come in at 1 minute to, if they could get to where they had to work, and they wouldn't be penalized for it, or anything.

The Court: What hours did the time clocks bear? What minutes do they bear?

Mr. Nunneley: The time clock bears the minute the man came by the clock.

The Court: Is it true that they all bear the time of 14 minutes to?

Mr. Nunneley: No, your Honor, that is not true. • • •

Mr. Lamb: The time clock cards of all of them are in evidence, and available.

The Court: They are available?

Mr. Lamb: Yes, your Honor.

The Court: Who has got those?

Master Quaife: I have all of them that are in evidence, your Honor please. • • •

The Court: So far as that part of the case goes, if this Court was convinced they had to report at this hour of the morning, 14 minutes to 7, and had to punch their time, their clock, at that time, or as soon after that as they got in line, the Court is very apt—I have not looked at the law, mind you—I would be very much inclined to hold the Kresge Company or Pottery Company liable. • • •

Hearing on Exceptions to Master's Report, June 8, 1943

The Court: I haven't made up my mind, but one of the things that impressed me in this case was this; here is a fellow who gets there at 14 minutes to, let us say. Probably he went over and changed his clothes, and then he did some little odd things, and then he walked to his place in the plant. Going from the time clock to his place in the plant is something like this portal to portal business that we read about. But, even in the portal to portal case, the Coal Mine case, they didn't permit him to recover for the time of changing his clothes and getting his tools, as I remember. Isn't that true?

Mr. Lamb: That is true.

The Court: Of course, now, I have thought this, that if I can ready home and get on the job, and do all the necessary work that I have to home, that is as far as getting my clothes ready, that when I got there I should be ready to work and I should be credited from that minute on.

But, if the company said to me, "You come there and change your clothes before you start work," that if they made me change my clothes there I was under the impression they should pay for that.

Of Course, that didn't amount to anything. It amounted to two or three minutes, or four minutes. And, I want to know what difference that would make, if any.

Here is another question. It wasn't argued very strenuously by the defendant. When they quit at 12 o'clock—I take the arbitrary hour of 12 o'clock—and then they punched out at, well, long enough for them to walk over there, I didn't see any evidence in there at all, Mr. Lamb, or any argument on your part, that they were working until 12:14 and then punching out and only credited until 12 o'clock. I didn't see any argument or any evidence to that effect at all.

So, for example, here is what happened, as I remember it—and, if I am not right on that I want you to put me right, and I am telling you these things before you argue so that you will know some of the things I have in mind—I noticed two or three cases there where the person quit or punched out at noon, or let's say at 12:08, and on cross-examination it developed that they quit at the whistle but they saw there would be a line-up in front of the clock, and instead of punching the clock at that time they would do something else; wash their face, or something else, or get their lunch, preparatory to punching out.

Isn't that true?

I mean, they didn't actually work until 12 or 12:10, or 12:15, but they would work until 12 o'clock and then something would consume their time until, perhaps, 12:08 or 12:10, or 12:14.

I want you to discuss that. Because, if this Court should decide for example, that the company should be entitled to not more than three to five minutes—I have just thought about that—in the moning, from three to five minutes before they went to work, at any time that they had to punch the clock before that time, that should go to them, and any time after five minutes at the close of the day I would wonder what difference, if any, that would make in their pay. • • •

Mr. Lamb: You stated this was an important case. Certainly the parties and I am convinced that this is the most important case that is pending under the Wage and Hour law in the United States today. We often think in this particular time of John L. Lewis' struggle on his portal to portal issue, and wonder whether it is purely political squabbling, or whether it is actually a grievance.

I am using him as an authority against our position, because it was a letter of the general counsel of the mine workers which largely gummed up this whole portal to portal issue, as the court noticed in the Tennessee Coal & Iron dissenting opinion. They relied very largely on the opinion of the general counsel of the mine workers on that portal to portal issue, but it has assumed a great importance to the men in industry. But, we have attempted to solve what appears today to be a very aggravated labor situation at Mt. Clemens in the state of Michigan in the orderly process of this court, and to determine this issue as to what constitutes working time in this orderly judicial fashion.

I think this issue here did get somewhat confused. I don't think purposely confused, or lawyers' confusion, but I say the very nature, the vastness of this case, did lend a certain confusion to a very simple issue as to what constituted working time.

The court raised the question, or stated that it had in its mind a question as to whether or not the imposition of a three-minute rule, or a five-minute rule, wouldn't be a proper one. To me it is necessary for these employees, in order to prevail, to prove working time. We have the burden of establishing that. And, it has been

our position that working time was that time where the employee was on the employer's premises at the employers request or sufferance.

The Court: Have you got any case on that at all?

Mr. Lamb: Yes, we have a great many cases on that, and I would like, first, to use the Administrator's rulings on that, because, as the court said in the American Trucking Association case, that those who are charged with the administration of an act, their opinions are, of course, entitled to great weight.

Now, what did the Administrator say here?

He has adopted interpretive bulletins. We had the Administrator's highest official here testifying in this case specifically about this plant, and he was asked the question—first he stated he had had this conference with this management, and he stated that he informed Mr. Doll, the president of this company, that time spent on the premises by any employees who were required to be there by the company was to be considered as hours worked regardless of whether they worked or not.

Then this question appears in the transcript. I asked him:

> "Did you instruct Mr. Doll that by virtue of Section 3 (G) of the Act that if employees were instructed to ring their time cards prior to starting time that any time hereafter would be considered working time and must be so computed?
>
> "A. Yes. They were to be considered as working beyond any time which they were required to punch, or to be on the premises."

The Court: Who said that?

Mr. Lamb: Mr. Rifkin, the Regional Director of the Wage and Hour Division.

The Court: Now, wait a minute. Let us analyze that.

Mr. Lamb: That is exactly—

The Court (Interposing): Do you mean to tell me Rifkin, or anybody else, can lay down a rule that says if I open a time clock here for you to be here at 14 minutes to 7, and you come at 14 minutes to 7, you can go

over and sit in the corner and draw pay from 14 minutes to 7 although the rest of the crew doesn't get there until 7 o'clock?

Mr. Lamb: Yes, your Honor.

The Court: Well, if that is the rule I take issue. There has got to be a time for these men to punch the clock.

Mr. Lamb: If the employer instructs that employee to be there at 14 minutes or 8 minutes to 7, even though some other employee does not report until 7, of course that employee is entitled to pay. That is the question of if he is instructed to be there at that time.

Then I will show with reference to the transcript of this case where the employer instructed these employees to be there at that particular moment.

The Court: Now, wait a moment.

Mr. Lamb: It isn't so absurd, your Honor.

The Court: I have 5,000 men working. They have got to come through that door. I say, "Be here ready to work at 9 o'clock," and every one of them is here ready to work at 9 o'clock.

Mr. Lamb: They should be paid from 9 o'clock.

The Court: But, he can't get in the door.

Mr. Lamb: That is right.

The Court: He can't get in the door until 10 o'clock, the last man gets through. Do I pay him from 10 o'clock?

Mr. Lamb: If he is instructed to be on the employer's premises at 9 o'clock, he should be paid from 9 o'clock. There is nothing absurd about that.

The Court: Isn't the testimony here—and if it isn't I want to be corrected. This is my impression of the testimony, that they said the clock would be open for punching at 14 minutes to.

Mr. Lamb: Your Honor, that is exactly the issue.

The Court: All right, now, I want to get that. I want the reference—I got it right here—to any testimony that is worth anything, that the men had to be there at 14 minutes to 9 or 14 minutes to 7, whatever the time was.

* * *

The Court: Is there anything unreasonable in my saying to you, five of us are going to be on this job tomorrow, to make sure that you who are lazy and don't get around the way you should you—I wouldn't say that actually, I am just supposing that—I say, "All right, we will all be here at 6:45, or 6:50, so that we are all ready to go to work at 7 o'clock."

Now, isn't that in the interest of labor itself and the four individuals as against the one?

Mr. Lamb: It isn't in the interest of anyone, your Honor. It isn't even what occurs actually, to tell the man to be in the plant at 6:30 and mean that he should be there at 7. Labor can't ask that.

The Court: I mean if it was that extreme I would say no. All right—

Mr. Lamb (Interposing): If the employer instructs an employee to be on the premises—

The Court (Interposing): I looked for this thing, and I am frank to say that I can't see in here where they were told you had to be there at 14 minutes earlier, and I don't see how they all could have punched 14 minutes early because it took them three or four minutes to go through, nor where they ever fired anybody except possibly this one girl, and that is denied, for not being there on time. • • •

The Court (Interposing): I have interrupted you most of the time. I will tell you why, because I have gone through most of this looking for this testimony that these people started at 14 minutes to. Now, they didn't start at 14 minutes to. I can't find any instance where they started before 7 o'clock.

And, the claim of the plaintiff seems to be that because their boss said, "Be here 14 minutes early," by which he meant, according to the testimony, that the time clock would be opened at 14 minutes to, you will have 14 minutes to get ready, the whole bunch of you, that for that reason these men now claim they should be paid from the time that they punched the clock, knowing they didn't go to work until 7 o'clock. That is in there, too. I went through that testimony. • • •

Mr. Cooper: The claim of 14 minutes, four times a day, as the Court has observed from looking at the transcript, was narrowed down to a claim of 14 minutes in the morning when it came to the testimony, and it was with respect to that one 14-minute period before work started in the morning, and, typically, the period from 14 minutes to 7 o'clock, that practically all the testimony was about. * * *

Only 25 persons can get through the time clock within the space of a minute, and the testimony discloses that there were these two time clocks—

The Court (Interposing): 25 in a minute?

Mr. Cooper: Yes, your Honor. There is testimony of three witnesses that we produced to that effect. The only contrary testimony was one of the plaintiffs, Mr. Larimer, who said they couldn't get through that fast. He put it something like 20 in a minute.

We have these two time clocks, your Honor—

The Court (Interposing): That would be five minutes, with two time clocks, for the 1,000 men to go through.

Mr. Cooper: That isn't—your mathematics are entirely correct, your Honor, but because of the fact there were different shifts, some in the afternoon and some in the morning; some 6 o'clock shifts and some 7 o'clock shifts, so that it broke down to this, that there were a little more than 200 employees going through each of these two time clocks during the period between 14 minutes to 7 and 7 o'clock.

The Court: That ought to take about two minutes.

Mr. Cooper: And it would take about between 8 or 9 minutes to get the entire group through the time clock.

* * *

The Court: Oh, wait a minute. That is right. It would take 4 minutes for 100. Yes, sure. Sure.

Mr. Cooper: And, in that same connection, if I may hand to the court three particular exhibits numbered 97 through 99, which were prepared by picking out three days, one at the very beginning of the period involved in the lawsuit, and one right in the middle, as close as you could hit the middle, and still get a day at the top of

the time clock card, and one at the end of the period involved—may I hand this to your Honor?

The Court: Yes.

Mr. Cooper: It will explain itself better than I can explain it (handing exhibits to the court).

It shows the number of individuals who punched through the time clock at every minute from 14 minutes to 7 right up until 7 o'clock, and each line represents one individual checking through. The three cards show about a uniform pattern.

There is a period from 7 to 9 minutes when the employees pass through at an almost uniform rate, and then when you get up to about 6 minutes to the hour, 5 or 6 minutes to the hour, the great bulk of the employees have passed the time clock, but not until then. And then there is a scattered dribbling of employees ringing through the time clock between 5 minutes to the hour and the even hour.

The time clock cards, we think, demonstrate that there was no—

The Court (Interposing): Wait until I take a look at this.

Mr. Cooper: Yes, your Honor.

The Court: Doesn't this bear out their statement? Here are 27, 25, 24, 27, 25, 29, in the first five minutes. That makes 175, at least. About 180. 180 or 160 in the first five minutes out of 218. All of them, practically all of them were in there five minutes before, anyway.

Mr. Cooper: That is correct, by 5 minutes to the hour most all of them are in there.

The Court: Why would that be?

Mr. Cooper: I beg your pardon?

The Court: Why would that be? Why is that necessary?

Mr. Cooper: There are a number of reasons for it. One is the circumstance that a good number of the employees would figure on getting there around about a quarter to 7 if they were going to start at 7 o'clock. Many of them

lived long distances from the plant, and they would come driving up, and if everything went well they would get there early in the morning, and they would sit outdoors in the summer, and indoors in the wintertime, until the time clock gards were opened, and then they would start passing through the time clocks.

And, you find, if you check any particular man, that sometimes he will be up in the forepart of the procession, and then you go into the other times and you will go along and he will not even punch through the time clock until about five minutes to the hour.

Take a case of a man who punches through the time clock at five minutes to the hour. You asked me why they were all through by 5. Then you have to add to that the time that it would take him to walk to his apartment.

The Court: Well, now, what was the furthest that anybody had to walk?

Mr. Cooper: It was between 900 and 1,000 feet.

The Court: Three blocks, or one block? No, that is three blocks.

Mr. Cooper: The plant is just less than a quarter of a mile long, your Honor, and that is the clay shop. Mr. Metz in the clay shop was asked what time production would start if the last man in his group of three punched the time clock at 4 or 5 minutes to 7, and he said if the last man in our group punched the time clock at 4 or 5 minutes to 7 it would be after 7 before we actually started production. • • •

We have been speculating some this afternoon, if the Court please, whether there was any possibility any employee might have done some work before the regular starting time on any day. Without taking up your Honor's time on it I want to suggest what we tried to get into in detail in our brief. In fact, we spent about ten pages on it, starting at page 191, what the plaintiffs must prove is that some work was done by a particular plaintiff. In other words, there has to be proof of damages. And that where it is impossible to determine whether or

not any individual started work a minute or two minutes on some days before time, a minute or two after starting time on other days, why, then, because of the uncertainty of the evidence there could be no recovery. • • •

Mr. Cooper: And, my point is that unless the plaintiffs by their testimony in this case have proved that they did work before 7 o'clock, that there could be no recovery.

The Court: That is the only thing that is bothering me a great deal in this case, I will tell you that. • • •

Hearing on Motions for Findings, Etc.
Sept. 13, 1943

Mr. Lamb: Of course, I don't think your Honor held that these people are not entitled to pay prior to a regular starting time. Your opinion indicated the practice and said that there has been an obvious attempt on the part of the company to circumvent the Fair Labor Standards Act.

The Court: Well, I don't know who it was, but one of those foremen, he would tell them to get there. There isn't any question but what he would, in my opinion, when they started at 7 o'clock, he would say get there quarter of seven. But they didn't get there a quarter of seven, they didn't get there 14 minutes to 7, they didn't get there 5 minutes to 7. Some of them got there as late as one minute to 7, yet none of them was fired.

Now, it is fair, when people are on piecework, to get them to report at work to punch a clock in time so that they don't upset everybody else's work. • • •

Mr. Lamb: The "regular starting time" is the thing I have objection to, because that assumes they established a regular starting time out there, and the Court finds in its opinion that they started, when they were told to report at 7, they knew they were to report there at 6:46. We discussed that.

The Court: Now, wait a minute. There was sort of a general understanding that whenever they started at seven, that the clocks were open at quarter of seven. And I guess the foreman did say, "Be here a quarter of seven." • • •

Mr. Cooper: The phrase, "regular starting time," was used by the Master in his report, and I am not sure whether your Honor used it in his opinion, but I am sure nothing in your opinion is inconsistent with that language.

Mr. Lamb: Here is the reference to what the Court meant by "starting time" (handing a document to the Court).

The Court: I don't see that it makes any difference.

Mr. Nunneley: I believe the findings should be clear, so that when the computation has to be made, we want to know what time to start figuring from.

The Court: What I am talking about is when they said they were going to start at 7 o'clock, that they got them in there 14 minutes or 15 minutes before time, that they were entitled to get them in there so that the straggler wasn't going to hold up the rest of them. Now, that is one of the main things, so that the rest of them could punch the clock. They had two clocks, didn't they?

Mr. Cooper: Yes, your Honor.

Mr. Nunneley: Two at first, and three later. • • •

The Court: Now, even when they said "be there at 6:45," the time set for starting work was 7 o'clock. You didn't claim any differently?

Mr. Lamb: We claim that they started work the minute that they arrived, your Honor.

The Court: There isn't one bit of proof to that effect.

Mr. Lamb: But your findings, the Court's opinion, your Honor—

The Court: Well, I will change the opinion if I have worded it that way, because there is no proof to that effect at all. As a matter of fact, you have told me you were going to be able to prove these men came in there at 14 minutes to 7 o'clock, they all got in, and if they didn't get there, they were fired; that they quit at 14

minutes after 12 and were only paid to 12. There isn't one word in there to that effect.

Then you told me that they came back at 14 minutes to one, let us say, and did not get paid until one o'clock. Now, there is no evidence of that in there.

Mr. Lamb: They have got thousands of time cards in the record, your Honor, and every one of them—

The Court: The time cards don't make any difference. Now, I know what went on out there. I do think that if they got down there, the bunch of them, being on piece work, that they jumped the gun, and I do think that the people were as much a party to it as the management. The management encouraged it; and I would like to penalize the management for doing it. But I have got to go on your proof. Now, if there is going to be any question about this thing, I will leave it in there, "starting time."

Mr. Nunneley: We believe it should be "regular starting time."

The Court: Well, all right, leave it as it is, because I am not going to let you maneuver me into that position.

Mr. Lamb: I am simply urging that we make this clear, so that there won't be any dispute. There isn't any way of eliminating a dispute unless we follow the Court's opinion.

The Court: That is just exactly what I am going to do. I will sign that just exactly as they prepared it. "Regular starting time." You can understand English. You told me you were going to do a lot of things, and I said if that is so, I would give them something they would wish they had never got. You didn't prove it, and it isn't my fault.

What else have you got?

Mr. Lamb: Your Honor, may I be heard on this now?

The Court: Not now. I have listened to this case for two years.

Mr. Lamb: I have worked on it three years.

The Court: I go out of my way to try to give you a little time, on testimony that wasn't worth a continental. . . .

Mr. Lamb: May I simply ask the Court one additional thing, if I may?

The Court: You may go before the Master and take additional testimony, and I will decide what if any fees you are entitled to. • • • •

Mr. Cooper: Your Honor please, there is one other matter I would like to bring to your Honor's attention, which is before the Court on one of our motions this morning and has not as yet been ruled on, either by the Master or by the Court.

We raised the defense in the pleadings, that if the plaintiffs prevailed and there was any recovery for the plaintiffs, there should be offset against the amount of recovery due plaintiffs, the extra compensation or bonus which was paid them by the defendant.

The Master stated that as one of the defenses, and stated in view of his ruling it would be unnecessary to consider it.

The Court: I think you better figure it both ways, what it would be with that offset and without, and the Court will decide that question later on. I can't decide that question now. • • •

Mr. Cooper: There remains before your Honor one motion for findings of fact and conclusions of law, some of which are inconsistent with the Court's opinion, some of which cover matters like this set-off business, that we haven't argued. So that our record will be clear, is that motion being held open?

The Court: I suppose so. I don't want to decide that other motion, because I don't know anything about it.

Mr. Lamb: Would your Honor also clarify the status of the motion which we filed, in which we followed the opinion of the Court?

The Court: I deny you followed the opinion of the Court, and I deny the motion. • • •

Hearings on Motions to Amend Findings, etc.
Jan. 4, 1944

The Court: All right. Anderson vs. Mt. Clemens Pottery.

Mr. Cooper: If the Court please, the case is now—

The Court (Interposing): Before you get into that, there are certain questions I want to ask you and which I would probably interrupt to ask you anyway.

On page 1 of your brief, one of the defenses raised in your answer was that employees had been paid extra compensation each year. Was that defense originally raised?

Mr. Cooper: Yes, your Honor.

The Court: Wasn't there something to the effect that that was an afterthought here? Didn't you make that claim, or did you, Mr. Lamb?

Mr. Lamb: I do not think so, your Honor.

The Court: All right. I remember there was something about an after-thought. Do you remember that, in an argument?

Mr. Nunneley: In the brief that Mr. Lamb just gave us he said that it was an after-thought, but it wasn't.

The Court: That is what I thought. You claimed that at one time?

Mr. Lamb: Well, we certainly claimed that the notion of setting off these voluntary payments was something that arose afterwards as a defense to this lawsuit. It was given as a gift or bonus at the time, and several years later they decided that it was so-called "extra compensation." • • •

The Court: Let's discuss first the question of setting off this extra payment, as you refer to it, extra compensation, against what they might be entitled to, and the

Court has held they are entitled to, by virtue of the formula set out by the Court. Now, let's discuss that.

• • •

The Court: I can see where, at the end of the year especially, when that Act first went into effect, in order to play safe some employer might have gone to his men and said, "Well, now, here, I am paying you 2 per cent more on everything you earned, and if there is any legal responsibility on me because of this Act that I do not quite understand, or do not appreciate, or do not know about, I want that to apply on any extra work, extra pay that you are entitled to."

I think any court in the world would uphold the finding that the man was perfectly justified in that. But if he said, "Now, this is a little bonus for you"—he did not call it a bonus—"extra compensation," but all the time he was depriving this man of his rightful earnings, I do not mean intentionally, but he was depriving him of his rightful earnings, and then when the man catches up with him after a while, he says, "I paid you all you are entitled to"—that was a Christmas present, that was a 4th of July present, or that was just to keep him working the next six months the way he had the last six months. Can he come now and say that you can figure that against it? • • •

Mr. Lamb: I wanted to simply suggest, too, that the other judges of that district did then decide similar to Judge Freed's decision, and Judge Jones later wrote an opinion for all of them to that effect.

I simply point that out because I appreciate there may be a strike against us here. I have appreciated that we have had a long, up-hill battle in this Mt. Clemens case. They have whittled off one claim, they have whittled off another, and we are now at the point, however—

The Court (Interposing): The Master whittled them all off. I gave you some life on very meager testimony, but nevertheless there was testimony in your favor, and

I felt that what you claimed happened, did happen, to some extent, not, however, to the extent that you people claimed. There was no evidence at all about keeping them fifteen minutes after the noon hour and fifteen minutes after the afternoon hour at all. • • •

The Court (Interposing): I agree with you, and they agree with you on all of that, that there wasn't any agreement.

Mr. Lamb: That is right.

The Court: That arbitrarily at the end of every six months they took 2 per cent of the wage and gave it to them as extra compensation. There isn't any doubt about that, but they say that no matter how they did it, that whatever amount they gave to these men can be offset against any amount that the man was legally entitled to, and Judge Lederle in his case says that they are right, and four or five others say they are right—no use spending time on facts that are not disputed.

Now, give me a little law, that is what I am looking for, because the Court has never felt that they should offset any bonus against these wages, and I have said so time and time again, but unfortunately if I am confronted with so much authority that I—well, I have no alternative—what am I going to do? I am not going to start manufacturing law of my own when judges all over the country say I am wrong, and there is some merit to their position. Do not argue the facts; they are not in dispute. • • •

The Court (Interposing): This is not vacation pay, it is extra compensation. Now, that is the point that you have got to bear in mind, and all the evidence shows that it is extra compensation and not vacation pay. As a matter of fact, some of the men did not take vacations, and they got their bonus on the 26 weeks, or the 52 weeks.

Mr. Lamb: This is a payment in lieu of vacation.

The Court: Now, wait a minute. Do not put evidence in here; that is not in there; there isn't one bit of evidence that this was in lieu of vacation. If there had been

you would have a different problem. There isn't one bit of evidence on that. The evidence is that they figured up what they had earned in six months and gave them 2 per cent on it. If they had six months or four months of vacation, it was all the same. Am I wrong on that? Isn't that true?

Mr. Nunneley: Your Honor is correct. • • •

The Court: The Hutchinson vs. Berry—the McMillan case; do you know whether that was vacation pay or not?

Mr. Cooper: If your Honor please, if I may borrow Mr. Lamb's book for a moment; the point of that opinion, I submit to the Court, is that the payment which was made in that case could not under the evidence be treated as a bonus. In other words, in that case it was not a bonus or extra compensation, because the Court says that as to defendant's claim of offset to treat this as a bonus may not be done.

The Court: He does not say that; now, read it. I will tell you what he says. The Court says if they had treated it as a bonus they would be in a worse hole than otherwise, so you cannot assume—read it..

Mr. Cooper: That is correct, and they added something, to treat this as a bonus or increased compensation would increase the hourly rate overtime pay and penalty.

The Court: So they could have got a bigger kick than this way—do not fool me on that one.

Mr. Cooper: I have not finished, your Honor.

The Court: All right.

Mr. Cooper: The defendant cannot be deemed to have so intended. To credit defendant with this sum on account of unpaid overtime is inconsistent with its stand in this litigation.

The Court: Yes. The logical result is to infer that the employer intended it as a gratuity, and it had been so treated. Of course, you come out with a statement that a corporation cannot give any gifts. I don't know. If there were no cases at all on this thing, I would not hesitate a minute, but I do have to give due respect to the

opinion of my colleagues and to other courts. A judge cannot figure that he knows it all, and there is some merit, there is merit where a company tries to defend itself, but for a company to pose as a very generous organization and say, "I am paying you something extra," and the poor fellow that is working for them does not find out until a year or so later that all he got paid for was what he was entitled to, and then have the company come in and say, "Well, maybe you are right, but you are not going to get any gratuity."

That does not seem right to me, and yet they could have protected themselves.

The only cases on this point that I can see so far is your case, and that is against the plaintiff in this case; there isn't any question about that. • • •

The Court (Interposing): Do not write any brief, because, gentlemen, there is no use of writing briefs. I want to read some of these cases. As I have told you, too, Mr. Nunneley, I am not sympathetic with the position of the defendant. I have been very frank. After all, however, I do not write the law; I have got to interpret it, at least if there are precedents I have to follow them, and I cannot let my own personal idea about giving a fellow a gift, and then only giving him something that he is entitled to, sway me here.

If you have any other cases on that point, give them to me in a week, and you may come across some others. Your only case right in point, however, is the Judge Lederle case, don't you think so?

Mr. Cooper: That, I think, is the only one on all fours, your Honor.

The Court: And that is on all fours, no question about it. • • •

Hearings on Motions for Judgment, etc.
June 12, 1944

The Court: All right, gentlemen. Now, what is the first issue here today?

Mr. Lamb: I think the first issue, your Honor, is to consider an order reducing the opinion of the Court rendered on March 3 to a judgment.

The reason for the delay in that I think is due largely to my own unfamiliarity with the rules, and no order was submitted. Then, two weeks after the decision was rendered herein, on March 3, the United States Supreme Court decided the so-called portal to portal case of the Tennessee Coal and Iron Corporation, that defined the term "work."

Then the practical problem arose in submitting an order to your Honor, whether in view of the portal to portal decision of the United States Supreme Court, the Court still wished to adopt the formula incorporated in its opinion, of pay for more than seven minutes in the morning and five minutes in the afternoon, or whether the Court would adopt the rule that all time on the employer's premises under the employer's directions was compensable time in view of the Tennessee Coal and Iron decision.

Not knowing how the Court would rule on that question—

The Court: (Interposing) Do you think that case applies here, the portal to portal pay?

Mr. Lamb: Well, I do, yes, your Honor; in this, that certainly these employees, after they punch the time card, are certainly under the direction of the employer. He may send them to one machine or send them to another; he may give them one assignment or another.

And that is exactly what the United States Supreme Court said in that case, that every second on the employer's premises need not be productive effort, but that if

the employee is on the premises under the direction and control of the employer, then certainly the employee must be paid for it.

The Court: How about if he quits at twelve o'clock—the whistle blows at twelve o'clock, he quits working, does he get paid for the minute or two it takes him to get off the premises?

Mr. Lamb: I would say yes, because the distance from the time clock is fixed by the employer.

The Court: Have you got to have an electric time clock at each bench?

Mr. Lamb: It takes 40 or 50 minutes for these miners to go underground.

The Court: Oh, the miners are different. They have to walk a mile sometimes before they get to work, or probably two miles.

Mr. Lamb: Sometimes three or four miles.

The Court: I might, if I had to say it over again, say five minutes instead of seven, but I am not going to. I think that I hit upon the only reasonable solution in this case that I could, after the Special Master had said that you were not entitled to anything. I felt that you were and gave it to you.

But I know this, that unless the time has arrived where the minute the fellow gets into the gate, automatically a clock—just like you have seen these electric rays, that when you go to step in front of a door, it opens a door—you have seen those doors, haven't you?

Mr. Lamb: Yes.

The Court: Now, unless we have come to the point where the minute the man walks on the premises that it registers, we are going to have an awful time trying to pay him for every second that he is under the employer's jurisdiction.

Now, I think that where they have to come there and spend ten or fifteen minutes every morning before they can get to work, that is one thing. I think I said that in my opinion, or words to that effect, didn't I, Mr. Nunneley?

Mr. Nunneley: Something like that.

The Court: Well, here he comes in and he punches the time clock. If the fellow out in front, the fellow that is first in there, if he stalls, as they very often do, he gets paid his time, and the man at the end, who can't get through, is serving as much as the fellow out in front, and it took him four minutes to go through that time clock, didn't it, in this case?

Mr. Nunneley: We claimed around eight.

The Court: Oh, no, not to get through the time clock. No, gentlemen, you showed me, as I remember, four to five minutes that they went through the different time clocks.

Mr. Lamb: We thought it was less than that, but there were different opinions on it.

The Court: Then what does he do, reaches over here and grabs a couple gloves? How many seconds went by? Why, if you get to that point, they will have to quit two minutes to 12; there would have to be a preliminary whistle at two minutes to twelve so that they can be off the property at twelve o'clock.

Now, have we reached such a status in our life that everybody has got to become a clock watcher? Have you watched the clock on this case? Do I watch the clock here?

EXHIBITS

(Incorporating Appellant's Designation of Exhibits)

Exhibit 1 (1A-1MM)

Tr. 79; R. 408

Time Clock Cards of Steve Anderson.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 2 (2A-2C)

Tr. 84, 3059; R. 408, 1300

Steve Anderson's Annual Earnings Records.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 3 (3A-3MM)

Tr. 138; R. 425

Time Clock Cards of Earl Trombley.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 4 (4A-4I)

Tr. 174; R. 435

Pay Stubs Attached to Checks Issued to Earl Trombley.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 5 (5A-5MM)

Tr. 3059; R. 1300

Time Clock Cards of Rita Schultz.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 6 (6A-6C)

Tr. 3060, 3070; R. 1300

Earl Trombley's Annual Earnings Record.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 7

Tr. 3060; R. 1300

Time Clock Card of Lillian Socia for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 8

Tr. 3060; R. 1300

Time Clock Card of Leo Stafford for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 9

Tr. 3060; R. 1300

Time Clock Card of Arthur Baxter for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 10

Tr. 3061; R. 1300

Time Clock Card of Clarence Burgess for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 11

Tr. 3061; R. 1300

Time Clock Card of Nelson Luchtman for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 12

Tr. 3061; R. 1300

Time Clock Card of Catherine May for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 13

Tr. 3061; R. 1300

Time Clock Card of Luella Rohrbeck for Pay Period Ending February 25, 1941.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 14

Tr. 3061; R. 1300

Time Clock Card of George Schroeder for Pay Period Ending February 25, 1941.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 15

Tr. 3061½; R. 1300

Time Clock Card of Clarence O. Schwartz for Pay Period Ending February 25, 1941.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 16 (16A-16LL)

Tr. 3062; R. 1197, 1300.

Time Clock Cards of Mary Sawicki.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 17

Tr. 3062; R. 1300

Time Clock Card of Louis Thurman for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 18

Tr. 3062; R. 1300

Time Clock Card of William Wendt for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 19

Tr. 3062; R. 1300

Time Clock Card of Arthur Baxter for Pay Period Ending November 29, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 20

Tr. 3062; R. 1300

Time Clock Card of Clarence Burgess for Pay Period Ending November 29, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 21

Tr. 3062; R. 1300

Time Clock Card of Nelson Luchtman for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 22

Tr. 3062; R. 1300

Time Clock Card of Catherine May for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 23

Tr. 3062; R. 1300

Time Clock Card of Luella Rohrbeck for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 24

Tr. 3063; R. 1300

Time Clock Card of George Schroeder for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 25

Tr. 3063; R. 1300

Time Clock Card of Clarence O. Schwartz for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 26

Tr. 3063; R. 1300

Time Clock Card of Mary Sawicki for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 27

Tr. 3063; R. 1300

Time Clock Card of Louis Thurman for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 28

Tr. 3063; R. 1300

Time Clock Card of William Wendt for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 29 (29A-29M)

Tr. 828; R. 600

Receipt for Wages, on Wage-Hour Division Form, signed by Numerous Employees, November, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 30-A

Tr. 2234; R. 973

Blueprint of Mt. Clemens Pottery Company Plant. Reproduced by Photostat.

BISQUE

KILNS

BISQUE
CAR LOADING

SAGGER FILLING

CLAY SHOP

DRYER

TRIANGLES

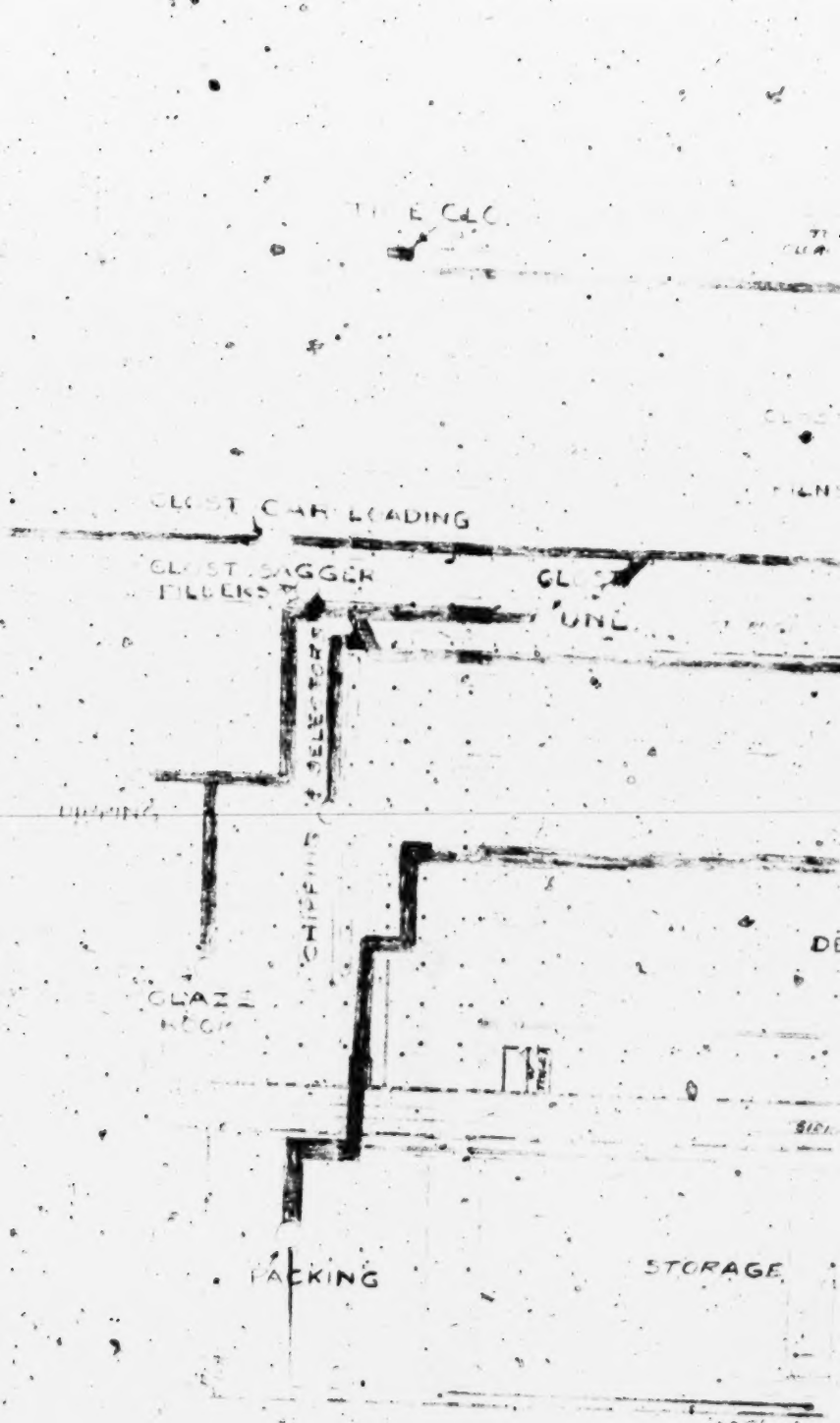
TRIANGLES

AUTOMAT

BOILER

ENGINE
ROOM

SAGGLI


CLOSET CAR LOADING
CLOSET JAGGER
FILLERS
PACKING
STORAGE

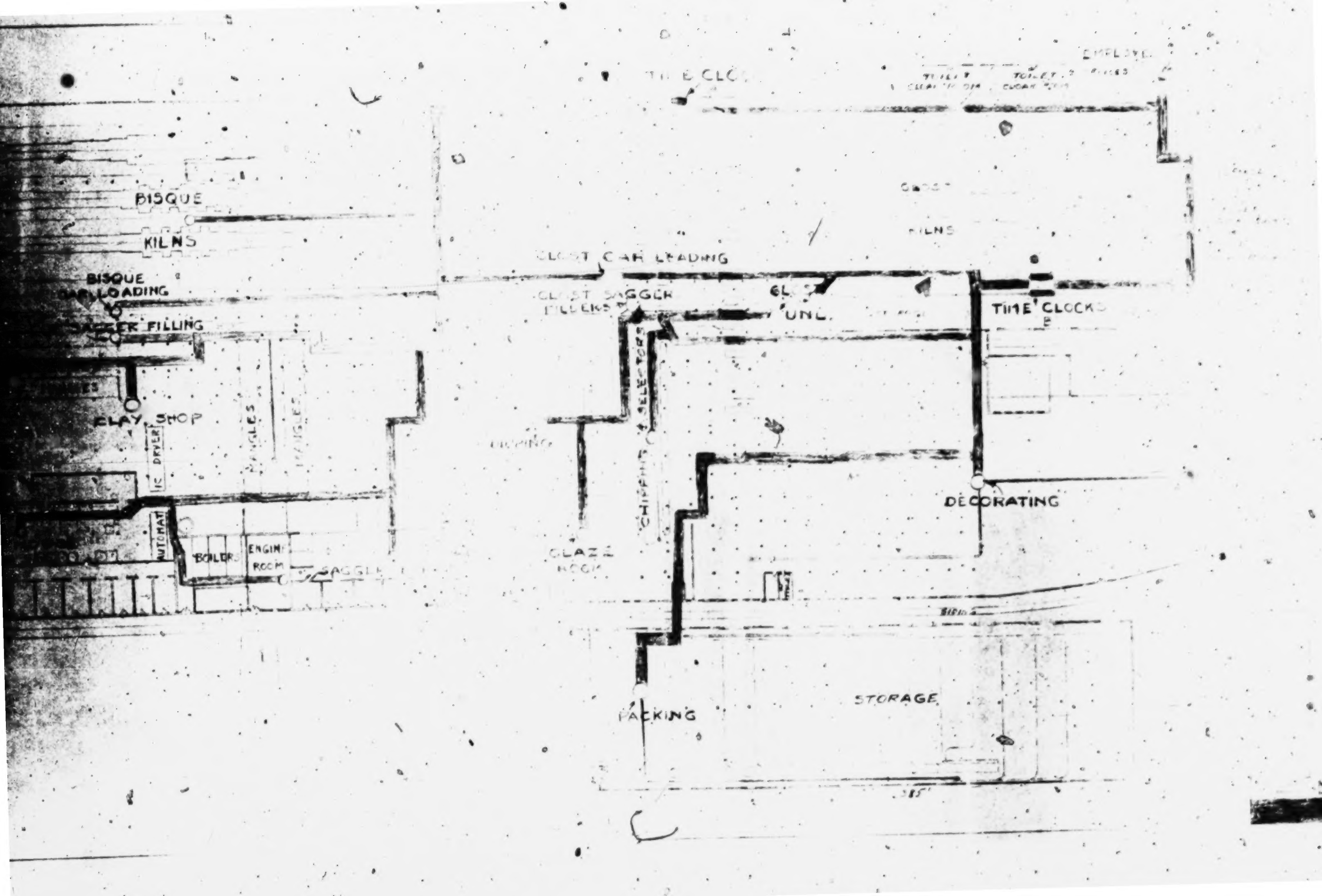

BISQUE
KILNS
BISQUE
LOADING
FILLING
CLAY SHOP
DRYER
BOILER
ENGINE
ROOM
KILNS
TIME CLOCK
DECORATING
GLAZE
ROOM
PACKING
STORAGE

Exhibit 31 (31A-31LL)

Tr. 865; R. 611

Time Clock Cards of John Metz.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 32

Tr. 3063; R. 1300

Time Clock Card of Walter Selk for Pay Period End ing December 3, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 33

Tr. 3063; R. 1300

Time Clock Card of Walter Selk for Pay Period End ing January 7, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 34 (34A-34KK)

Tr. 1159; R. 694

Time Clock Cards of Earl Larimer.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 35 (35A-35LL.)

Tr. 1279; R. 738

Time Clock Cards of Lillian Socia.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 36

Tr. 3063; R. 1300

Time Clock Card of Wilma Redlowski for Pay Period Ending April 8, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 37

Tr. 3063; R. 1300

Time Clock Card of Olga Denisuik for Pay Period Ending April 8, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 38

Tr. 3064; R. 1300

Time Clock Card of Lia Dekiere for Pay Period Ending April 8, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 39 (39A-39AA)

Tr. 3064; R. 1300

Time Clock Cards of Goldie Broniecki.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 40

Tr. 3064; R. 1300

Time Clock Card of Lia Dekiere for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 41

Tr. 3065; R. 1300

Time Clock Card of Wilma Redlowski for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 42

Tr. 3065; R. 1300

Time Clock Card of Olga Denisuik for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 43

Tr. 1399; R. 774

Bundle of Rubber Thumb Cots.
Physical Exhibit Transmitted to Appellate Court.

Exhibit 44

Tr. 1486; R. 791

Volume of Payroll Work Sheets, January-April, 1941.
Original Exhibit to be Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 45

Tr. 1524; R. 802

Invoice Showing Purchase of Gloves with Rubber Lining, dated March 20, 1941, at price of $2.70 a dozen, subject to cash discount of 2%.

Exhibit 46

Tr. 1524; R. 802

Invoice dated March 20, 1941, covering purchase of 96 dozen pair of Canvas Gloves at $100.80, subject to 2% cash discount, freight prepaid.

Exhibit 47 (47A-47N)

Tr. 1626; R. 826

Pay Stubs of Alice Stoll, August, 1940, through February, 1941.
Original Exhibit to be Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 48 (48A-48D)

Tr. 1662; R. 834

Pay Stubs of Nicholas Dacko, February 6, 1940-March 11, 1941.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 49

Tr. 1710; R. 835

Instructions to Decorating Department.

Print in Full.

DECORATING DEPARTMENT

Production with Quality

1. Report for work every day and be on time every morning.
    1. In case of sickness or other necessary causes for being absent, notify your foreman.
    2. In the case of wishing a day off, give your foreman at least a two weeks' notice.
2. Keep Decorating Department in order.
    1. Keep your bench neat and clean.
    2. Keep floor dry and clean.
    3. Keep all print paper cleaned out of your tub and put it in the tubs beside waste water trough.
    4. Keep all white sheets of decal paper in order at your bench and put all dirty sheets in waste rack.
    5. Keep all bad ware cleaned up.
    6. Chipped and cracked ware must be put in central tray every night.

7. Place all breakage at place designated every night.
8. Save all pins and return them to print room daily.
9. In case of returning unused print to print room—put all cut print in a neat package and write the type of print and your name on the package.

3. Decal Operations.

1. Sizing.
   a. Apply a neat uniform size coat of medium thickness.
   b. Make sure the size coat is high enough to carry the print. Avoid as much as possible any size getting on the edge of the ware.
   c. Apply size for center sprays after applying border coat and keep center size coat lighter than border.
   d. Never try patching a size coat.

2. Printing.
   a. Apply decal sprays only when size coat has reached proper tackiness. Never apply decal when size coat is too wet and never let a size coat become too dry.
   b. Line all decal sprays up in their proper position on ware before pressing down. Make sure all decal sprays are on the ware in the exact position from the top and that each spray joins the next one in its proper relation.
   c. Be sure all decal sprays are properly trimmed and do not apply imperfect sprays.
   d. Press all decal sprays down thoroughly after they have been properly placed.

3. Rubbing.
   a. Rub all decal sprays down thoroughly and with extreme pressure.

b. Use a damp rubbing brush and keep the brush in good rubbing condition.
c. After ware has been thoroughly rubbed down, handle it carefully to avoid scratching.

4. Dipping.
   a. Allow ware to remain wholly submerged in tub only long enough to soak the print paper loose.
   b. Remove ware very carefully from tub, making sure every piece of print paper has been removed.
   c. Press all decal sprays down with a soft sponge.
   d. Clean all size from edges of ware or where lines are to go.

5. Inspection.
   a. Inspect every spray of each piece of ware very carefully. See that the decal sprays have not been scratched and that each spray is on exactly in its proper position.
   b. This is the last chance to avoid any bad ware leaving you and directly a responsibility on your part to avoid disastrous department loss.

6. Department Losses.
   1. Breakage.
      a. Always a direct result of carelessness.
      b. You are handling a fine grade of dinnerware and it must be handled as such.
   2. Chipped and Cracked Ware.
      a. This loss also occurs from improper handling of the ware.
      b. Delicate handling and proper stacking of ware will eliminate this source of loss.
   3. Print Loss.
      a. Print represents money and each spray must be accounted for.

b. Make all cutting operations neat and only as directed.
c. Cut all print in the Decorating Department and at your own bench. Have your scissors inspected by your foreman.
d. Keep all print in a box at your bench and in neat uniform order.
e. Avoid print loss occurring from washing off bad ware by eliminating the sources for bad ware.

4. Blistered Ware.
   a. This loss occurs where the ware has not been given proper printing operations.
   b. The main sources are:
      1. Improper size coat.
      2. Printing ware when size coat is too wet.
      3. Printing ware when size coat is too dry.
      4. Not rubbing thoroughly and hard enough.

5. Bad Print.
   a. This loss should never occur on any ware leaving the decal operator. Bad print is the result of decal sprays being cut into, scratched, or where decal print paper has not been removed.
   b. Poor or improper printing is a direct cause.

6. Equipment.
   a. Racks, pin boards, tubs, and pails must be kept in order to prevent maintainance expense.

Exhibit 50

Tr. 1767; R. 842

Volume of Payroll Work Sheets, September, 1938-December, 1938.

Not Received in Evidence.

Exhibit 51

Tr. 1767; R. 843

Volume of Payroll Work Sheets, January, 1939-April, 1939.

Not Received in Evidence.

Exhibit 52

Tr. 1767; R. 843

Volume of Payroll Work Sheets, April, 1939-July, 1939.

Not Received in Evidence.

Exhibit 53

Tr. 1767; R. 843

Volume of Payroll Work Sheets, August, 1939-November, 1939.

Not Received in Evidence.

Exhibit 54

Tr. 1768; R. 843

Volume of Payroll Work Sheets, November, 1939-February, 1940.

Not Received in Evidence.

Exhibit 55

Tr. 1768; R. 843

Volume of Payroll Work Sheets, February, 1940-June, 1940.

Not Received in Evidence.

Exhibit 56

Tr. 1768; R. 843

Volume of Payroll Work Sheets, June, 1940-September, 1940.
Not Received in Evidence.

Exhibit 57

Tr. 1768; R. 843

Volume of Payroll Work Sheets, September, 1940-December, 1940.
Not Received in Evidence.

Exhibit 58 (58A-58MM)

Tr. 1795; R. 852

Time Clock Cards of Eva Freddle.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 59-59A

Tr. 1809; R. 858

Pay Stubs of Eva Freddle.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 60

Tr. 1839; R. 867

Large Sheet of "Decal."
Not Offered in Evidence.

Exhibit 61

Tr. 1841; R. 868

Group of sixteen "Decal" Sheets Pinned Together.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 62 (62, 62A-MM)

Tr. 1944; R. 890

Time Clock Cards of Dorothy May.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 63 (63, 63A-FF)

Tr. 1944; R. 890

Time Clock Cards of Nicholas Dacko.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 64

Tr. 3501; R. 1471

Constitution of United Pottery Workers.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 65

Tr. 2234; R. 973

Table Showing Distances From the Clocks to Various Departments.

Reproduced in Full.

TIME CLOCK A

Distances from clocks to departments:

Department	Closest	Farthest
Clay Shop	400	800
Bisque Sagger Filling	485	570
Bisque Car Loading	430	530
Casting Dept.	685	820
Mould Dept.	820	890
Slip House	590	710
Sagger Dept.	450	510

TIME CLOCK B

Decorating Dept.	170	350
Packing Dept.	465	760
Chippers and Selectors	285	450
Glost Sagger Fillers	310	420
Glost Car Loaders	225	325
Glost Sagger Unloading	160	350
Glost Kilns	130	325
Bisque Kilns	430	820
Dipping and Brushing	385	510
Glaze Room	450	610
Maintenance	550	590
Boiler and Engine Room	780	
Total floor area of plant	8.28 acres	

Exhibit 66

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Edward G. Budd Manufacturing Company and Local 306, U.A.W.A. (C.I.O.) and Shop Rules.

Article VI, Section 2, provides:

"Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than thirty (30) minutes before starting time. During such thirty minute period employees shall conduct themselves in an orderly manner and shall not disturb other employees who are at work or otherwise interfere with the earning power of employees at work."

The Shop Rules provide:

"Employees will not be allowed to enter plant more than thirty (30) minutes before regular starting time for their shift and must be out of plant within thirty (30) minutes after completion of regular shift, unless otherwise instructed by their supervisor.

* * * * *

"Employees must be at their machines or benches, ready for work before starting time.

* * * * *

"Employees shall not leave their work places before quitting time."

Exhibit 67

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Booklet Entitled "Information for Hudson Employees."

This booklet contains shop rules providing in part as follows:

"Hours

"The normal starting time of the factory for the regular day shift is 7:00 A. M. Any variation in the starting time of this shift and the starting time of other shifts will be designated by your supervisor.

"Lunch Period

"The lunch period of the regular day shift referred to above will be from 11:30 A. M. to 12 noon. Lunch periods for other shifts will be designated by your supervisor. Lunch wagons are provided at convenient places throughout the plants. Washing up, loafing near the exits or lining up at the lunch wagons before the lunch period, is prohibited.

* * * * *

"Tardiness

"Habitual tardiness will not be tolerated.

"Lateness of an employee will be taken care of by the Timekeeper as follows:

"Up to fourteen (14) minutes late, inclusive, employee will be docked one-quarter (¼) hour."

"Fifteen (15) minutes late or over, employee will be docked one-half (½) hour, etc."

Exhibit 68

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Tampa Shipbuilding Company and Metal Trades Department of American Federation of Labor.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 69

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Johns-Manville Company and various labor unions.

This agreement provided in part:

> "When a shift begins, each worker is required to be in his place.
>
> "'Day workers' shall be at their respective posts ready for work at the time their pay starts and shall not leave their posts or quit work in advance of the time their pay stops."

Exhibit 70

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Shop Rules of Briggs Manufacturing Company, Detroit, Michigan.

These Rules provide in part as follows:

> "'Time Cards
>
> "Employees will be assigned a clock or time card upon which they are required to register the time each working day as follows:

"1—Before starting work.

"2—Once during lunch period (within fifteen (15) minutes prior to the end of period).

"3—After completing work.

"Employees failing to register time cards either 'in' or 'out' will be penalized one quarter hour's time.

"An employee who neglects to register his time card upon starting or leaving work must present the card to his foreman for approval for time not registered.

"The penalty for being late will be the remainder of the quarter hour in which the card is registered in, plus the time the employee is late.

"An employee who registers another employee's time card, or who allows his time card to be registered by another, or who in any way tampers with the registering of time cards, will be subject to immediate dismissal.

"Clock cards must be left in the rack and not carried around.

* * * *

"General Working Rules

"Employees must be in their departments ready for work when the starting signal sounds, and remain at work until the signal sounds at the regular quitting time."

Exhibit 71

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Briggs Manufacturing Company—Cleveland Plant—and Local 948, U.A.W.A. (C.I.O.), and Shop Rules.

Section 1 of Article 5 provides as follows:

"Every employee must ring his clock card as follows:

"(a) Before his starting time.

"(b) At the completion of his work.

"Employees must be in their departments ready for work when the signal is given for work to begin and must remain at their work until the signal is given to quit.

"Any failure to ring the clock card will result in the deduction of fifteen (15) minutes. The penalty for being late will be the remainder of the quarter hour in which the card is punched in, plus the time the employee is late."

Exhibit 72

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Shop Rules of Michigan Steel Tube Products Company.

Paragraphs 11 and 12 of the Shop Rules provide as follows:

"Be at your machine or station ready to work when the whistle blows, and remain there and continue working until the quitting whistle blows.

"Stop your machine at time specified for your department. Do not begin washing yourself or changing your clothes until the whistle blows."

Exhibit 73

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement—so-called "Appalachian Agreement" between National Coal Association and United Mine Workers of America.

The Section on Maximum Hours and Working Time provides in part as follows:

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they

receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named."

Exhibit 74 (74A-74LL)

Tr. 2453; R. 1068

Time Clock Cards of Delbert Phillips.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 75 (75A-75LL)

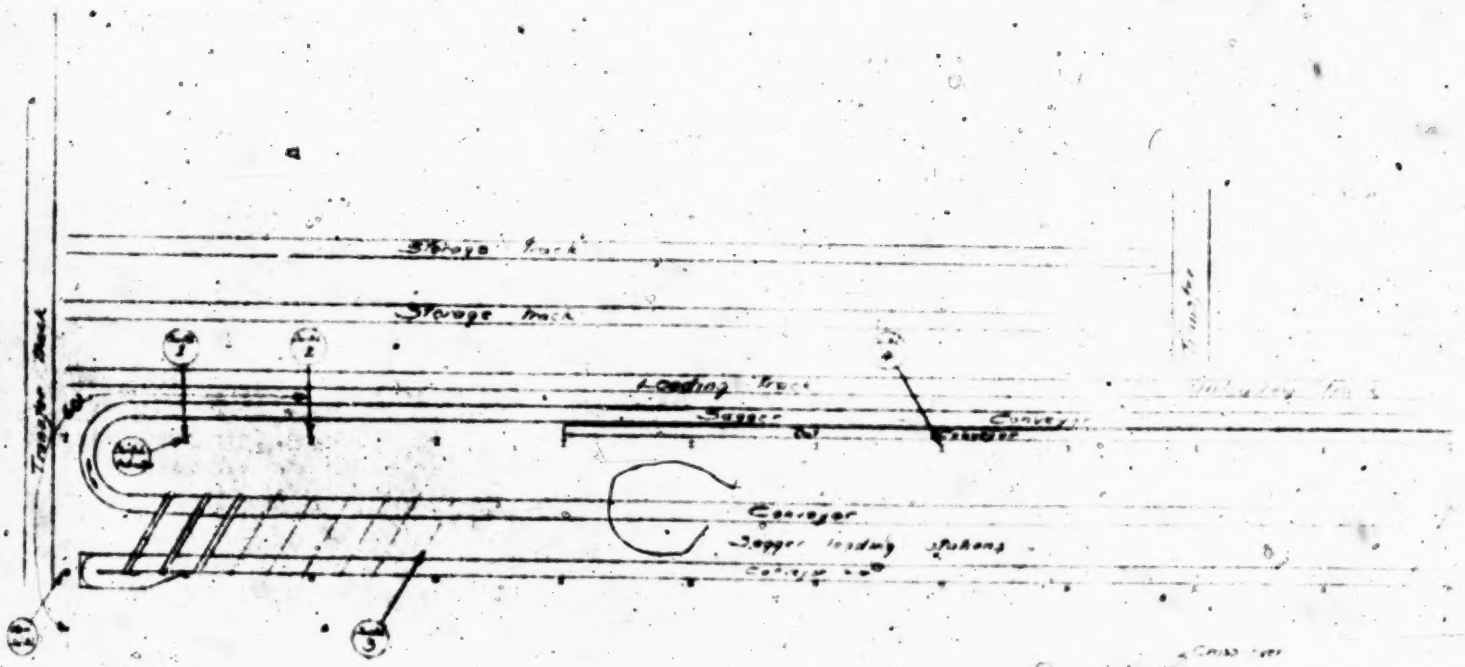
Tr. 2466; R. 1072

Time Clock Cards of Wells Clay.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 76

Tr. 2506; R. 1095

Floor Plan of Glost Belt.
Reproduce in full.


Storage Track
Storage Track
Loading Track
Conveyor
Conveyor
Conveyor loading stations

137'

Exhibit 77

Tr. 2522; R. 1099

Sheet of Decalcomania.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 78

Tr. 3297; R. 1391

Table showing Supplies Purchased by Dorothy May from October 25, 1938, to April 22, 1941.

Reproduce in Full.

SUPPLIES PURCHASED BY DOROTHY MAY

Oct.	25, 1938	None		July	11, 1939	None	
Nov.	8, 1938		.46	July	25, 1939	None	
Nov.	22, 1938	None		Aug.	8, 1939		.32
Dec.	6, 1938	None		Aug.	22, 1939	None	
Dec.	16, 1938	None		Sept.	5, 1939		.32
Dec.	31, 1938		.32	Sept.	19, 1939	None	
Jan.	10, 1939	None		Oct.	3, 1939	None	
Jan.	24, 1939		.64	Oct.	17, 1939	None	
Feb.	7, 1939	None		Oct.	31, 1939	None	
Feb.	21, 1939	None		Nov.	14, 1939	None	
Mar.	7, 1939		.32	Nov.	28, 1939	None	
Mar.	21, 1939	None		Dec.	12, 1939		.16
Apr.	4, 1939	None		Dec.	26, 1939	None	
Apr.	18, 1939		.44	Dec.	31, 1939	None	
May	2, 1939	None		Jan.	9, 1940	None	
May	16, 1939		.64	Jan.	23, 1940	None	
May	29, 1939	None		Feb.	6, 1940		.50
June	13, 1939	None		Feb.	13, 1940	None	
June	27, 1939		.28	Mar.	5, 1940	None	

Mar.	19, 1940	None		Oct.	15, 1940	None	
Apr.	2, 1940		.32	Oct.	29, 1940	None	
Apr.	16, 1940	None		Nov.	12, 1940	None	
Apr.	30, 1940	None		Nov.	26, 1940	None	
May	14, 1940	None		Dec.	10, 1940	None	
May	28, 1940	None		Dec.	24, 1940		.60
June	11, 1940	None		Dec.	31, 1940	None	
June	25, 1940		.36	Jan.	14, 1941	None	
July	9, 1940	None		Jan.	28, 1941	None	
July	23, 1940	None		Feb.	11, 1941	None	
Aug.	6, 1940	None		Feb.	25, 1941	None	
Aug.	20, 1940		.18	Mar.	11, 1941		.16
Sept.	3, 1940	None		Mar.	25, 1941	None	
Sept.	17, 1940		.32	Apr.	8, 1941	None	
Oct.	1, 1940	None		Apr.	22, 1941	None	
							$6.34

Exhibit 79

Tr. 2606; R. 1147

Annual Earnings Card of Barbara Boeling.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 80 (80A-80C)

Tr. 2608, 3066; R. 1150, 1300

Typical Set of Records—Time Clock Card, Work Sheet, Earnings Card, Check Identification Slip—Arthur Sibbi
Reproduce in Full.

PAY ENDING 916 MAR 25 1941
19

370-10-2623

NO. 916 NAME ARTHUR SIBBI

	Morning IN	Noon OUT	Noon IN	Night OUT	Extra IN	Extra OUT	
M	648	1156					
T	647	1154	1233	416			
W	647	1150	1247	400			
F	647	1151	1232	417			
S	647	1151	1232	416			
			1232	414			
M	647	1141	1232	431			
T	647	1153	1232	417			
W	647	1153	1232	417			
T	647	1139	1233	431			

TOTAL TIME ..... HRS

RATE .....

TOTAL WAGES .....

Form 4548 Printed by The Cincinnati Time Recorder Co. Cincinnati, O.

PAY ENDING 19

| | | |

RECEIVED FROM

The Mount Clemens Pottery Co.

Wages in full for pay ending 19

as per the following statement:

	Dollars	Cents
916 MAR 25 370-10-2623 916 ARTHUR SIBBI Total Amount Due		

Name Arthur Sibbi

Per .....

Company not responsible unless presented and signed by party to whom drawn

INDIVIDUAL EARNINGS RECORD

370-10-2623
916 ARTHUR BIBBI

Def. & SC
6-11-42

STATE U. I. | FED O. A. B. | HOUR | MISC

TIME WORKED DAYS	TIME WORKED HOURS	RATE	GROSS PAY	INC. SEC. TAXES STATE U. I.	INC. SEC. TAXES FED O. A. B.	BENEFITS BOND	BENEFITS MISC.	NET PAY	DATE
	7150	127	9071	91	120			8860	[illegible] 14 41
	7800	128	9985	100				9885	[illegible]
	7925	129	10234	102	120			10012	[illegible] 11 41
	7400	128	9462	95				9367	[illegible] 25 41
	7225	129	9324	93	120			9111	[illegible] 11 41
	7350	136	9981	100				9881	[illegible] 25 41
	7875	137	10817	108	120			10589	[illegible] 8 41
	8450	147	3604	36				3568	[illegible] 22 41
	3025	97	2935	29	120			2786	[illegible] 20 41
	6850	118	8093	81	120			7892	[illegible] 3 41
	7075	121	8538	85				8453	[illegible] 17 41

CLOCK NO. | FED. NO. | MOTHER'S MAIDEN NAME

BIRTH DATE | TERMINATION | SEX | COLOR | NO. OF DEPENDENTS

OCCUPATION | NATIONALITY | DATE STARTED | DATE LEFT EMPLOY | REASON

RATE | ADDRESS | TEL. NO.

MT. CLEMENS POTTERY CO
MT. CLEMENS MICH

Exhibit 81 (81A-81J)

Tr. 2653; R. 1159, 1165

Receipt for Wages, on Wage-Hour Division form signed by numerous employees November, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 82 (82A-82LL)

Tr. 2736; R. 1197

Time Clock Cards of Clarence Burgess.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 83 (83A-83JJ)

Tr. 2738; R. 1198

Time Clock Cards of Nelson Luchtman.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 84

Tr. 2957; R. 1300

Picture of Water Tower on Mt. Clemens Pottery Plant. The Water Tank Bears the Following Language:

"Mt. Clemens Pottery Company
Owned by
S. S. Kresge Company"

Exhibit 85-AB

Tr. 3066, 3070; R. 1300

Earnings Records of John Metz.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 86-ABC

Tr. 3066, 3070; R. 1300

Earnings Records of Earl Larimer.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 87-ABC

Tr. 3066, 3070; R. 1300

Earnings Records of Lillian Socia.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 88-ABC

Tr. 3066, 3070; R. 1300

Earnings Records of Eva Freddle.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 89 and 89-A

Tr. 3066, 3070; R. 1300

Earnings Records of Nicholas Dacko.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 90

Tr. 3069; R. 1300

Map of Mt. Clemens.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 91

Tr. 3139; R. 1323

Copy of Letter from Harry A. Reifin to Charles E. Doll, Sr., September 8, 1941.
Reproduce in Full.

September 8, 1941
21-114
XD:KKK:EM

348 Federal Building

Mt. Clemens Pottery Company
Mt. Clemens, Michigan
Attention: Mr. Charles E. Doll, Sr.,
Vice-President & General Manager

Gentlemen:

Information has been received in this office indicating that some of the employees employed by your company

are not being compensated correctly for the actual time worked in the production of goods for interstate commerce.

Reference is made to a situation similar to this: When an employee punches his or her time card IN at 6:31 A. M. and immediately proceeds to his or her work, this employee is not credited with the time worked from 6:31 A. M. to 6:45 A. M., but the compensable time begins at 6:45 A. M., even though these 14 minutes have been spent in the production of goods which ultimately move in interstate commerce.

Enclosed herewith is a copy of the Fair Labor Standards Act of 1938. Your particular attention is directed to the contents of Section 3(g) which states as follows: "'Employ' includes to suffer or permit to work." Also enclosed for your information is a copy of our Interpretative Bulletin No. 13, Hours Worked—Determination of Hours for Which Employees Are Entitled to Compensation Under the Fair Labor Standards Act of 1938.

In order that you may be fully aware of your responsibilities and probable liabilities under the provisions of the Fair Labor Standards Act, the above is called to your attention. The above conditions in the opinion of this office constitute violations of the provisions of the Fair Labor Standards Act.

If you have any questions as to the application of the provisions of the Fair Labor Standards Act to your business, please do not hesitate to communicate with us.

Very truly yours,

Harry A. Reifin
Acting Supervising Inspector

Encs.

Exhibit 92

Pf. 3206, 3504; R. 1350, 1473

Compilation of Clauses from Collective Agreements and Shop Rules.
Reproduce in Full.

EXCERPTS FROM COLLECTIVE AGREEMENTS AND SHOP RULES ISSUED PURSUANT THERETO, WITH REFERENCE TO HOURS OF WORK, USE OF TIME CLOCKS, ETC.

HOURS OF WORK

"Each shift or group shall have a standard starting and quitting time, subject to demands of production."

Collective Agreement, U.A.A.A.I.W., C.I.O. and Briggs Manufacturing Company, page 24

"There shall be a specific starting and quitting time. The starting and quitting time may be changed where necessary to maintain continuity of employment by agreement of the Companies and one or more members of the Executive Shop Committee."

"Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than thirty (30) minutes before starting time."

Collective Agreement, U.A.W., C.I.O. and Budd Wheel Company, page 17 and 19

"Unless local conditions require the establishment of a different starting time, which may be done by mutual

consent of the parties hereto, the first shift shall start not earlier than 7 a.m. and not later than 8 a.m. and continue eight (8) consecutive hours exclusive of lunch period."

Collective Agreement, Metal Trades Dept., A.F.L. and Tampa Shipbuilding Company, page 3

"The normal starting time of the factory for the regular day shift is 7:00 a.m. Any variation in the starting time of this shift and the starting time of other shifts will be designated by your supervisor."

Shop Rules, Hudson Motor Car Company page 9

USE OF TIME CLOCKS

"Employees will be assigned a clock or time card upon which they are required to register the time each working day as follows:

(1) Before starting work
(2) Once during lunch period (within fifteen (15) minutes prior to the end of period)
(3) After completing work

Employees failing to register time cards either 'in' or 'out' will be penalized one-quarter hour's time."

"Employees must be in their departments ready for work when the starting signal sounds, and remain at work until the signal sounds at the regular quitting time."

Shop Rules, Briggs Manufacturing Company, Detroit, pages 5 and 7

"Every employee must ring his clock card as follows:

(a) Before his starting time
(b) At the completion of his work.

Employees must be in their departments ready for work when the signal is given for work to begin and must remain at their work until the signal is given to quit."

Collective Agreement, U.A.A.A.I.W., C.I.O., and Briggs Manufacturing Company, page 27

"Every employee on time-card basis must punch only his own card. Punch in and out when entering or leaving the mill."

"Be at your machine or station ready to work when the whistle blows, and remain there and continue working until the quitting whistle blows. Stop your machine at time specified for your department. Do not begin washing yourself or changing your clothes until the whistle blows."

Shop Rules, Michigan Steel Tube Products Company, page 9 and 20

"No employee shall fail to ring his own clock card before he commences work or after he finishes work. No employee shall enter his department or the plant more than fifteen (15) minutes before the time when his work is to begin and no employee who has ceased his work shall remain in his department or in the plant more than fifteen (15) minutes thereafter without permission of his foreman."

Selected clauses from Current Labor Contracts, Automotive Parts and Equipment Mfgrs., Inc., pages 128-29 and 217.

"Employees will not be allowed to enter plant more than thirty (30) minutes before regular starting time for their shift and must be out of plant within 30 minutes after completion of regular shift, unless otherwise instructed by their supervisor."

"Employees must be at their machines or benches, ready for work before starting time."

Shop Rules, Budd Wheel Company, pages 27 and 28

"When a shift begins, each worker is required to be in his place."

"'Day workers' shall be at their respective posts ready for work at the time their pay starts and shall not leave their posts or quit work in advance of the time their pay stops."

Collective Agreement, A.F.L. and Johns-Manville Products Corp., page 7

MISCELLANEOUS CLAUSES RELATING TO COMPUTATION OF HOURS OF WORK

"Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine."

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at

present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named."

Collective Agreement, United Mine Workers and Coal Operators Associations, pages 1 and 2

"Lateness of an employee will be taken care of by the Timekeeper as follows:

Up to fourteen (14) minutes late, inclusive, employee will be docked one-quarter (¼) hour.
Fifteen (15) minutes late or over, employee will be docked one-half (½) hour, etc.

"Washing up, changing clothes or leaving your required place so as to be near a clock or lunch wagon before a whistle blows, either at noon or closing time, will not be permitted. Remain at your proper place and make no preparation for leaving until the whistle blows."

Shop Rules, Hudson Motor Car Company, pages 10 and 20

"The penalty for being late will be the remainder of the quarter hour in which the card is punched in, plus the time the employee is late."

Collective Agreement, U.A.A.A.I.W., C.I.O. and Briggs Manufacturing Company, page 27

"The penalty for being late will be the remainder of the quarter hour in which the card is registered in, plus the time the employee is late."

Shop Rules, Briggs Manufacturing Company, page 5

"Employees shall not enter their departments earlier than is necessary to report at their regular work places at their regular starting time, and they shall not remain in their departments after the close of their regular work shifts excepting for periods of authorized overtime."

Collective Agreement, United Rubber Workers and B. F. Goodrich Company, "Collective Bargaining Contracts" (Bureau of National Affairs, 1941) page 321

Exhibit 93 (93A-93KK)

Tr. 3251, 3254, 3260; R. 1371, 1372

Time Clock Cards of Floyd Pearl.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 94 (94A-94Z)

Tr. 3251, 3254; R. 1371, 1372

Time Clock Cards of Harry Lozen.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 95 (95A-95P)

Tr. 3251, 3254; R. 1371, 1372

Time Clock Cards of George Leibziet.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 96

Tr. 3304; R. 1395

Withdrawn

Exhibit 97

Tr. 3266; R. 1378

Table Showing Distribution of "Ring-Ins" for 7:00 A.M. Shift, November 8, 1939.

Reproduce in Full

DISTRIBUTION OF "RING-INS" FOR 7 A.M. SHIFT—11/8/39

		Total
6:46	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	25
6:47	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	24
6:48	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	29
6:49	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	27
6:50	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	16
6:51	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	29
6:52	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	26
6:53	1 1 1 1 1 1 1 1 1 1 1 1 1 1	12
6:54	1 1 1 1 1	5
6:55	1 1 1 1 1 1 1 1	8
6:56	1 1 1 1 1 1	6
6:57	1	1
6:58		0
6:59		0
7:00		0
		208

Exhibit 98

Tr. 3266; R. 1378

Table Showing Distribution of "Ring-Ins" for 7:00 A.M. Shift, July 17, 1940.
Reproduce in Full.

DISTRIBUTION OF "RING-INS" FOR 7 A.M. SHIFT—7/17/40

		Total
6:46	11111 11111 11111 11111 11111 11	27
6:47	11111 11111 11111 11111 11111	25
6:48	11111 11111 11111 11111 1111	24
6:49	11111 11111 11111 11111 11111 11	27
6:50	11111 11111 11111 11111 11111	25
6:51	11111 11111 11111 11111 11111 1111	29
6:52	11111 11111 11111 11111 11	22
6:53	11111 11111 11111 1	16
6:54	11111 11111 111	13
6:55	111	3
6:56	11	2
6:57	1	1
6:58	111	3
6:59		0
7:00	1	1
		218

Exhibit 99

Tr. 3266; R. 1378

Table Showing Distribution of "Ring-Ins" for 7:00 A.M. Shift, January 3, 1941.
Reproduce in Full.

DISTRIBUTION OF "RING-INS" FOR 7 A.M. SHIFT—1/3/41

		Total
6:46	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	27
6:47	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	26
6:48	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	28
6:49	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	21
6:50	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	27
6:51	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	28
6:52	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	24
6:52	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	24
6:54	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	26
6:55	1 1 1 1 1 1	6
6:56	1	1
6:57		0
6:58	1 1	2
6:59		0
7:00	1	1
		241

Exhibit 100 and 100-A

Tr. 3276; R. 1382

Analysis of Time Clock Records of Kiln Foremen and Working Hours.
Reproduce in Full.

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF KILN FIREMEN

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	P.M.	A.M.			A.M.	P.M.			P.M.	P.M.		
10:55	11:00	7:00	7:05	6:51	7:00	3:00	3:01	2:48	3:00	11:00	11:13	Nov. 28, 1939
10:55			7:05	6:50			3:03	2:49			11:01	
10:55			7:09	6:59			3:00	2:49			11:04	
10:47			7:00	6:50			3:01	2:48			11:01	
10:47	11:00	7:00	7:04	6:49	7:00	3:00	3:00	2:52	3:00	11:00	11:02	Nov. 29, 1939
10:47			7:04	3:49			3:05	2:49			11:01	
10:54			7:10	6:49			3:01	2:49			11:02	
10:47			7:00	6:49			3:00	2:47			11:01	
10:47	11:00	7:00	7:12	6:51	7:00	3:00	3:05	2:46	3:00	11:00	11:01	Nov. 30, 1939
10:48			7:05	6:49	7:00	2:45	2:48	2:35	2:45	11:00	11:02	
10:51			7:04	6:51	7:00	2:45	2:46	2:[illegible]7	2:45	11:00	11:01	
10:49			7:05	6:53	7:00	2:45	2:46	2:38	2:45	11:00	11:02	
10:54	11:00	7:00	7:08	6:52	7:00	3:15	3:16	3:02	3:15	11:00	11:05	Dec. 1, 1939
10:48			7:01	6:47	7:00	3:15	3:27	3:02	3:15	11:00	11:04	
10:49			7:09	6:49	7:00	3:00	3:00	2:50	3:00	11:00	11:06	
10:49			7:01	6:49	7:00	3:00	3:00	2:49	3:00	11:00	11:02	

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	P.M.	A.M.			A.M.	P.M.			P.M.	P.M.		
10:51	11:00	7:00	7:04	6:49	7:00	3:00	3:02	2:47	3:00	11:00	11:02	Dec. 2, 1939
10:52			7:03	6:48		3:00	3:01	2:46	3:00		11:00	
10:50			7:01	6:46		3:00	3:03	2:46	3:00		11:00	
10:53			7:00	6:48		1:00	1:06	12:52	1:00		11:02	
10:46	11:00	7:00	7:06	6:49	7:00	3:00	3:03	2:49	3:00	11:00	11:01	Dec. 3, 1939
10:46			7:00	6:50			3:02	2:49			11:04	
10:50			7:05	6:49			3:04	2:49			11:01	
10:50			7:05	6:50			3:04	2:50			11:01	
10:46	11:00	7:00	7:04	6:49	7:00	3:00	3:03	2:47	3:00	11:00	11:01	Dec. 4, 1939
10:46			7:00	6:51			3:00	2:47			11:03	
10:50			7:05	6:49			3:03	2:47			11:03	
10:47			7:06	6:51			3:00	2:49			11:03	
10:47	11:00	7:00	7:00	6:49	7:00	3:00	3:00	2:49	3:00	11:00	11:02	Dec. 5, 1939
10:47			7:00	6:49			3:05	2:55			11:01	
10:47			7:07	6:49			3:00	2:47			11:03	
10:47			7:00	6:51			3:08	2:50			11:01	
10:49	11:00	7:00	7:05	6:49	7:00	3:00	3:04	2:51	3:00	11:00	11:00	Dec. 6, 1939
10:47			7:00	6:49		3:00	3:14	2:52	3:00		11:00	
10:51			7:05	6:53		3:00	3:04	2:51	3:00		11:00	
10:51			7:05	6:51		5:00	5:01	4:46	5:00		11:05	

(Continued on next page)

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	P.M.	A.M.			A.M.	P.M.			P.M.	P.M.		
10:47	11:00	7:00	7:10	6:49	7:00	3:00	3:00	2:49	3:00	11:00	11:00	Dec. 7, 1939
10:47			7:00	6:49			3:00	2:48			11:03	
10:47			7:05	6:49			3:13	2:53			11:00	
10:48			7:07	6:50			3:09	2:48			11:00	
10:50	11:00	7:00	7:07	6:47	7:00	3:00	3:01	2:48	3:00	11:00	11:04	Dec. 8, 1939
10:50			7:03	6:47			3:00	2:48			11:01	
10:52			7:01	6:46			3:01	2:49			11:01	
10:49			7:01	6:52			3:01	2:48			11:04	
10:53	11:00	7:00	7:01	6:48	7:00	3:00	3:00	2:49	3:00	11:00	11:00	Dec. 9, 1939
10:48			7:04	6:47			3:01	2:48			11:00	
10:46			7:07	6:48			3:02	2:49			11:00	
10:53			7:00	6:52			3:05	2:50			11:00	
10:50			7:05	6:49			3:05	2:48			11:03	Dec. 10, 1939
10:50			7:05	6:51			3:00	2:47			11:01	
10:50			7:05	6:49			3:03	2:49			11:01	
10:50			7:00	6:51			3:01	2:51			11:00	
10:49	11:00	7:00	7:05									
10:47	11:00	7:00	7:04	6:50	7:00	3:00	3:00	2:48	3:00	11:00	11:02	Dec. 11, 1939
11:15	11:15	7:00	7:00	6:49			3:02	2:48			11:05	
10:48	11:00	1:00	1:00	6:51			3:03	2:48			11:05	
12:46	1:00	6:45	6:45	6:50			3:00	2:48			11:03	

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF KILN FIREMEN

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:50	7:00	3:00	3:02	2:59	3:00	11:00	11:03	10:48	11:00	7:00	7:02	Mar. 11, 1941
6:52		3:00	3:05	2:51	3:00		11:03	10:48			7:02	
6:52		3:00	3:05	2:47	3:00		11:02	10:52			7:05	
6:49		3:15	3:17	3:02	3:15		11:02	10:48			7:05	
6:50	7:00	3:00	3:04	2:46	3:00	11:00	11:10	10:49	11:00	7:00	7:05	Mar. 12, 1941
6:53			3:01	2:50			11:00	10:49			7:05	
6:52			3:04	2:46			11:00	10:49			7:04	
6:53			3:01	2:46			11:04	10:48			7:02	
6:51	7:00	3:00	3:05	2:48	3:00	11:00	11:03	10:47	11:00	7:00	7:11	Mar. 13, 1941
6:51			3:00	2:50			11:04	10:47			7:05	
6:49			3:04	2:46			11:02	10:51			7:03	
6:52			3:06	2:46			11:01	10:51			7:06	
6:51	7:00	2:45	2:50	2:42	2:45	11:00	11:01	10:52	11:00	7:00	7:00	Mar. 14, 1941
6:50		2:45	2:49	2:42	2:45		11:00	10:51			7:05	
6:51		3:00	3:07	2:46	3:00		11:02	10:46			7:00	
6:51		3:00	3:07	2:47	3:00		11:01	10:46			7:07	

(Continued on next page)

Defendant's Exhibit 100-A

1561

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:52	7:00	3:00	3:18	2:48	3:00	11:00	11:02	10:53	11:00	7:00	7:06	Mar. 15, 1941
6:50		3:00	3:02	2:50	3:00		11:03	10:51			7:02	
6:50		3:00	3:02	2:48	3:00		11:02	10:48			7:03	
6:46		3:15	3:21	3:05	3:15		11:02	10:53			7:08	
6:48	7:00	3:00	3:06	2.56	3:00	11:00	11:00	10:52	11:00	7:00	7:07	Mar. 16, 1941
6:53			3:09	2:48			11:05	10:47			7:06	
6:52			3:01	2:48			11:00	10:52			7:07	
6:52			3:01	2:48			11:01	10:46			7:05	
6:49	7:00	3:00	2:11	2:50	3:00	11:00	11:01	10:46	11:00	7:00	7:10	Mar. 17, 1941
6:52			3:04	2:46	3:00	11:00	11:01	10:46			7:11	
6:51			3:07	2:46	3:00	11:00	11:00	10:46			7:03	
6:51			3:11	3:03	3:15	11:15	11:23	10:49			7:08	
6:54	7:00	3:00	3:06	2:46	3:00	11:00	11:03	10:46	11:00	7:00	7:04	Mar. 18, 1941
6:48			3:02	2:46			11:01	10:48			7:06	
6:49			3:00	2:50			11:01	10:48			7:05	
6:51			3:00	2:53			11:03	10:47			7:07	
6:54	7:00	3:00	3:03	2:46	3:00	11:00	11:00	10:51	11:00	7:00	7:12	Mar. 19, 1941
6:54			3:01	2:46			11:02	10:46			7:07	
6:50			3:04	2:46			11:01	10:50			7:06	
6:50			3:05	2:52			11:08	10:51			7:07	

1562

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:51	7:00	3:00	3:00	2:54	3:00	11:00	11:01	10:50	11:00	7:00	7:04	Mar. 20, 1941
6:50			3:08	2:51			11:01	10:52			7:08	
6:51			3:00	2:46			11:01	10:49			7:08	
6:51			3:02	2:50			11:02	10:51			7:03	
6:52	7:00	3:00	3:02	2:54	3:00	11:00	11:01	10:47	11:00	7:00	7:01	Mar. 21, 1941
6:52			3:01	2:50			11:02	10:47			7:00	
6:52			3:11	2:54			11:05	10:49			7:00	
6:50			3:01	2:50			11:02	10:47			7:02	
6:47	7:00	3:00	3:00	2:49	3:00	11:00	11:00	10:47	11:00	7:00	7:01	Mar. 22, 1941
6:47			3:10	2:53			11:01	10:49			7:02	
6:51			3:00	2:49			11:01	10:51			7:01	
6:46			3:06	2:50			11:01	10:49			7:02	
6:49	7:00	3:00	3:05	2:51	3:00	11:00	11:00	10:48	11:00	7:00	7:04	Mar. 23, 1941
6:50			3:05	2:48			11:00	10:48			7:04	
6:50			3:01	2:48			11:00	10:48			7:06	
6:46			3:03	2:46			11:00	10:48			7:06	
6:48	7:00	3:00	3:03	2:46	3:00	11:00	11:04	10:48	11:00	7:00	7:03	Mar. 24, 1941
6:49			3:03	2:49			11:02	10:48			7:10	
6:47			3:04	2:47			11:02	10:48			7:06	
6:51			3:01	2:49			11:04	10:49			7:06	

Exhibit 101 and 101-A

Tr. 3290; R. 1385

Analysis of Working Hours and Time Clock Records of Pressmen in Slip House.
Reproduce in Full.

Defendant's Exhibit 101

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF PRESSMEN IN SLIP HOUSE FOR PAY PERIOD ENDING MAY 21, 1940

Date	Beginning and End of Shift	Punch In		Punch Out	
Wed. May 8, 1940	5:00 AM— 1:00 PM	4:47	4:47	1:05	1:06
Thurs. May 9, 1940	5:00 — 1:00	4:46	4:46	1:06	1:06
Fri. May 10, 1940	5:00 — 1:00	4:46	4:46	1:09	1:09
Mon. May 13, 1940	5:00 — 1:00	4:46	4:46	1:07	1:07
Tues. May 14, 1940	5:00 — 1:00	4:47	4:47	1:06	1:06
Wed. May 8, 1940	1:00 PM— 9:00 PM	12:47	12:48	9:00	9:00
Thurs. May 9, 1940	1:00 — 9:00	12:48	12:46	9:01	9:01
Fri. May 10, 1940	1:00 — 9:00	12:50	12:46	9:07	9:07
Mon. May 13, 1940	1:00 — 9:00	12:48	12:48	9:05	9:05
Tues. May 14, 1940	1:00 — 9:00	12:50	8:52	9:04	3:00
	9:00 PM— 3:00 AM				
Wed. May 8, 1940	9:00 PM— 5:00 AM	8:48	8:48	5:06	5:06
Thurs. May 9, 1940	9:00 — 5:00	8:46	8:47	5:03	5:03
Fri. May 10, 1940	9:00 — 5:30	8:46	8:46	5:34	5:35
Mon. May 13, 1940	9:00 — 3:30	8:52	8:47	3:41	3:31
Tues. May 14, 1940	9:00 — 3:00	8:52	12:46	3:00	9:04
	1:00 — 9:00 PM				
Wed. May 15, 1940	5:00 AM— 1:00 PM	4:48	4:48	1:07	1:08
Thurs. May 16, 1940	5:00 — 1:00	4:48	4:47	1:07	1:07
Fri. May 17, 1940	5:00 — 1:00	4:46	4:47	1:08	1:08
Mon. May 20, 1940	1:00 PM— 9:00	12:46	12:46	9:06	9:06
Tues. May 21, 1940	1:00 — 9:00	12:46	12:46	9:05	9:05
Wed. May 15, 1940	1:00 PM— 9:00 PM	12:49	12:49	9:05	9:05
Thurs. May 16, 1940	1:00 — 9:00	12:48	12:48	9:01	9:01
Fri. May 17, 1940	1:00 — 9:00	12:48	12:48	9:02	9:02
Mon. May 20, 1940	9:00 — 4:30 AM	8:48	8:48	4:32	4:32
Tues. May 21, 1940	9:00 — 2:45	8:48	8:48	2:47	2:48

Wed.	May 15, 1940	9:00 PM— 5:00 AM	8:50	8:47	5:07	5:07
Thurs	May 16, 1940	9:00 — 4:15	8:53	8:49	4:26	4:26
Fri.	May 17, 1940	9:00 — 2:00	8:46	8:46	2:06	2:06
Mon.	May 20, 1940	5:00 AM—12:45 PM	4:46	4:46	12:59	12:59
Tues.	May 21, 1940	5:00 — 1:00	4:46	4:46	1:02	1:02

Defendant's Exhibit 101-A

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF PRESSMEN IN SLIP HOUSE FOR PAY PERIOD ENDING DECEMBER 3, 1940

Date	Beginning and End of Shift	Punch In		Punch Out	
Wed. Nov. 20, 1940	5:00 AM—12:30 PM	4:47	4:47	12:41	12:41
Fri. Nov. 22, 1940	5:00 —12:30	4:47	4:47	12:43	12:43
Sat. Nov. 23, 1940	5:00 — 1:00	4:46	4:46	1:06	1:06
Mon. Nov. 25, 1940	5:00 —12:30	4:47	4:47	12:43	12:43
Tues. Nov. 26, 1940	5:00 —12:30	4:46	4:46	12:34	12:34
Wed. Nov. 20, 1940	1:00 PM— 9:00 PM	12:47	12:48	9:01	9:01
Fri. Nov. 22, 1940	1:00 — 8:45	12:46	12:46	8:49	8:49
Sat. Nov. 23, 1940	1:00 — 8:45	12:46	12:46	8:56	8:56
Mon. Nov. 25, 1940	1:00 — 9:00	12:50	12:49	9:02	9:01
Tues. Nov. 26, 1940	1:00 — 9:00	12:46	12:49	9:01	9:01
Wed. Nov. 20, 1940	9:00 PM— 5:00 AM	8:46	8:46	5:09	5:09
Fri. Nov. 22, 1940	9:00 — 4:45	8:46	8:46	4:57	4:57
Sat. Nov. 23, 1940	9:00 — 4:30	8:46	8:46	4:42	4:42
Mon. Nov. 25, 1940	9:00 — 4:45	8:51	8:51	4:57	4:57
Tues. Nov. 26, 1940	9:00 — 4:30	8:47	8:47	4:34	4:33
Wed. Nov. 27, 1940	5:00 AM—12:30 PM	4:47	4:47	12:34	12:34
Thurs. Nov. 28, 1940	5:00 —12:30	4:46	4:46	12:41	12:41
Fri. Nov. 29, 1940	5:00 — 1:00	4:46	4:46	1:12	1:12
Mon. Dec. 2, 1940	1:00 — 9:00	12:48	12:48	9:08	9:08
Tues. Dec. 3, 1940	1:00 — 9:00	12:47	12:47	9:08	9:08
Wed. Nov. 27, 1940	1:00 PM— 9:00 PM	12:47	12:47	9:01	9:01
Thurs. Nov. 28, 1940	1:00 — 9:00	12:50	12:47	9:08	9:08
Fri. Nov. 29, 1940	1:00 — 9:00	12:47	12:47	9:08	9:07
Mon. Dec. 2, 1940	9:00 — 5:00 AM	8:47	8:46	5:01	5:01
Tues. Dec. 3, 1940	9:00 — 5:00	8:55	8:56	5:01	5:01
Wed. Nov. 27, 1940	9:00 — 5:00	8:47	8:47	5:05	5:05
Thurs. Nov. 28, 1940	9:00 — 5:00	8:46	8:46	5:09	5:09
Fri. Nov. 29, 1940	9:00 — 5:15	8:51	8:51	5:19	5:19
Mon. Dec. 2, 1940	5:00 AM— 1:00 PM	4:47	4:47	1:00	1:00
Tues. Dec. 3, 1940	5:15 — 1:00	5:12	5:12	1:09	1:09

Exhibit 102

Tr. 3295; R. 1391

Analysis of Minimum Idle Time Spent in Plant by Boiler Firemen Before and After Work.
Reproduce in Full.

DEFENDANT'S EXHIBIT 102

ANALYSIS OF MINIMUM IDLE TIME SPENT IN PLANT BY BOILER FIREMEN BEFORE AND AFTER WORK

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:53	7:00	3:00	3:07	2:46	3:00	11:00	11:01	10:50	11:00	7:00	7:06	Oct. 23, 1940
6:52	"	"	3:05	2:52	"	"	11:05	10:46	"	"	7:10	Nov. 6, 1940
6:49	"	"	3:05	2:46	"	"	11:02	10:50	"	"	7:04	Nov. 20, 1940
6:51	"	"	3:09	2:49	"	"	11:07	10:50	"	"	7:06	Dec. 4, 1940
6:51	"	"	3:04	2:50	"	"	11:04	10:52	"	"	7:06	Dec. 18, 1940
6:50	"	"	3:08	2:53	"	"	11:05	10:46	"	"	7:05	Dec. 29, 1940
6:54	"	"	3:07	2:46	"	"	11:03	10:50	"	"	7:07	Jan. 15, 1941
6:51	"	"	3:10	2:49	"	"	11:06	10:47	"	"	7:06	Jan. 29, 1941
6:55	"	"	3:06	2:46	"	"	11:01	10:50	"	"	7:06	Feb. 12, 1941
6:50	"	"	3:08	2:47	"	"	11:07	10:48	"	"	7:04	Feb. 26, 1941
6:55	"	"	3:05	2:56	"	"	11:01	10:49	"	"	7:06	Mar. 12, 1941
6:50	"	"	3:05	2:50	"	"	11:02	10:47	"	"	7:04	Mar. 26, 1941
6:52	"	"	3:08	2:48	"	"	11:01	10:48	"	"	7:10	Apr. 9, 1941

Exhibit 103 and 103-B

Tr. 3406; R. 1436

Invoices from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company covering R. I. Wool Form Sponges. One Invoice for 650 pieces at 26¢ each and the other for 1,000 pieces at 26¢ each.

Exhibit 104

Tr. 3406; R. 1437

Invoice from Welton Rubber Company of Detroit to Mt. Clemens Pottery Company, dated April 7, 1941, covering six dozen pair rubber gloves at $2.70 per dozen, subject to 2% cash discount, f.o.b. Detroit.

Another invoice of same date and on same terms covering 12 dozen pair gloves at $2.70 per dozen.

Exhibit 105

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, Dated April 1, 1941, covering Wool Form Sponges at 35¢ each, freight prepaid.

Exhibit 106

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, dated October 17, 1940, covering Wool Form Sponges at 25¢ each, freight prepaid.

Exhibit 107 A-B

Tr. 3406; R. 1437

Invoices from Divers Sponge Company to Mt. Clemens Pottery Company, one dated August 2, 1940, covering R. I. Form Sponges at 22¢, freight prepaid; the other dated August 21, 1940, covering Grass Sponges at 19¢ each, freight prepaid.

Exhibit 108

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, dated July 15, 1940, covering R. I. Form Sponges at 20¢ each, subject to 2% cash discount, freight prepaid.

Exhibit 109

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, dated November 30, 1939, covering R. I. Wool Form Sponges at 26¢ each and 20¢ each, freight prepaid.

Exhibit 110

Tr. 3406; R. 1438

Invoice of Reeves Steel & Mfg. Company of Dover, Ohio, to Mt. Clemens Pottery Company, dated December 27, 1940, covering Water Pails, some at $4.88 a dozen and some at $2.50 a dozen, f.o.b. Dover—freight allowed, subject to 2% cash discount.

Exhibit 111

Tr. 3440; R. 1449

Certified Copies of Petition and Affidavit in Attachment.

Case No. 159,790, Common Pleas Court, Lucas County, Ohio.

Reproduce in Full.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

No. 159790

Eric Sopha,
160 Barbara Street, Mt. Clemens, Michigan,
Alice Stoll,
136 Grand Ave., Mt. Clemens, Michigan,
Esther Klein,
187 North Gratiot, Mt. Clemens, Michigan,
Andrew Hirsner;
Mt. Clemens, Michigan,
Mary Corby,
406 E. Main St., Mt. Clemens, Michigan,
Hiram Stroup,
406 Hamon St., Mt. Clemens, Michigan,
Virginia Weier,
105 Elizabeth St., Mt. Clemens, Michigan,
Carl Starner,
Mt. Clemens, Michigan,
Robert Fitton,
Mt. Clemens, Michigan,
Helen Stade,
Mt. Clemens, Michigan,
Arthur Dobberowsky,
Mt. Clemens, Michigan,
Norman Engelbrecht,
Mt. Clemens, Michigan,

Plaintiffs,

vs.

The Mt. Clemens Pottery Co.,
Rose and Church Streets,
Mt. Clemens, Michigan,

Defendant.

PETITION

I.

Come now the plaintiffs herein and state that each is an employee of The Mt. Clemens Pottery Company, defendant herein; that the Mt. Clemens Pottery Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal place of business at Mt. Clemens, Michigan.

II.

Plaintiffs further state that each is now and has been an employee of The Mt. Clemens Pottery Company and that each has claims accruing for overtime compensation against the defendant, The Mt. Clemens Pottery Company, by virtue of the Fair Labor Standards Act of 1938, 29 U.S.C.A. 216 (b), hereinafter referred to as the Act.

III.

Plaintiffs further state that since on or about October 24, 1938, the effective date of said Act, the defendant, The Mt. Clemens Pottery Company, has been violating the provisions of said Act, including Section 7 (a) of said Act.

IV.

Plaintiffs further allege that the said Mt. Clemens Pottery Company employs approximately 1250 employees each of whom, including these plaintiffs, are engaged in manufacturing, handling, packing and distributing pottery and other clay products shipped in interstate com-

merce. Plaintiffs further allege that almost all of the raw materials used by said corporation are purchased in North Carolina, Georgia and other States outside the State of Michigan; that lead, silicia, first and other ingredients used by the defendant, The Mt. Clemens Pottery Company, in the manufacture of these products, are purchased in Missouri and other States of the United States and that approximately 85% of the finished products of said corporation are sold and distributed in interstate commerce outside the State of Michigan.

V.

Plaintiffs further state that since October 24, 1938, said Mt. Clemens Pottery Company worked its employees in violation of said Act for periods exceeding 44 hours a week without paying said employees overtime compensation as provided for in the aforesaid Act. That there is now due and owing said employees from the period of October 24, 1938, to October 24, 1939, pay for the hours worked in excess of said 44 hours per week and that plaintiffs are enfitled to equal amounts as liquidated damages, all as more fully set forth in Section 16 (b) of said Act. Plaintiffs further state that after October 24, 1939, the maximum number of working hours of employees, such as the plaintiffs herein, was reduced by said Act to 42 hours and that the defendant company in violation of said Act has been working its employees in excess of 42 hours in each of said weeks since October 24, 1939, and that there is due and owing said plaintiffs pay for hours worked overtime in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16 (b) of said Act.

VI.

Plaintiffs further state that since October 24, 1939, said Act required employers, such as the defendant herein, The Mt. Clemens Pottery Company, to pay overtime com-

pensation for hours worked in excess of 40 hours. That the plaintiffs herein have worked in excess of 45 hours a week since October 24, 1940, and that there is due and owing said plaintiffs pay for said hours worked over time in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16 (b) of said Act.

VII.

Plaintiffs further state that each of them worked on either a piece work, a bonus or upon an hourly rate basis. Plaintiffs state that by reason of the provisions of said Act said defendant has been required to pay employees a minimum of 30¢ an hour since October 24, 1939, but that certain plaintiffs, including the plaintiff, Alice Stoff and others, were not paid said statutory minimum wage of 30¢ per hour as provided for in said Act. That female employees in the Decorating Department of said defendant company were required to and did work for each week several hours in cutting patterns or "print" for which said employees, although engaged in labor for the defendant, received no compensation. Plaintiffs state that said employees have had deductions made from their wages for brushes, sponges, gloves and carrying devices used for and in behalf of said employer and that said deductions from the wages of said employees were unauthorized and in contravention of the provisions of said Act and the rulings of the Administrator thereof.

Plaintiffs further state that said employees, including the female plaintiffs herein, were required to serve a period of ten weeks, during which time 10% was deducted from their pay and that payments made to said female plaintiffs were, as a result thereof, less than the minimum set forth in the said Act.

VIII.

Plaintiffs further state that the defendant, The Mt. Clemens Pottery Company, does not pay its employees

for the hours worked in accordance with the time shown on the time cards of each of said plaintiffs. Plaintiffs state that said employees have as much as 56 minutes a day deducted from the time shown on said time cards. Plaintiffs state that the defendant, The Mt. Clemens Pottery Company, deliberately falsified the computations of hours worked as shown by said time cards. Said Company deducts from the time worked by each of said employees all time prior to the quarter hours wherein said employee reports for work in the morning, so that an employee who reports and begins work at 6:46 A. M. is credited only with working from 7:00 A. M. When the same employee checks out for lunch at 12:14, the company when paying said employee pays him only for work up to 12 noon. When said employee reports back from lunch at 12:46 P. M., the company only pays him for time worked from 1:00 P. M., and when said employee reports out at 4:29 P. M., the company only pays him for work up to 4:15 P. M. Said situation is true of every time card of every employee of The Mt. Clemens Pottery Company, including these plaintiffs.

Said company does not pay said employees for setting up machines for themselves and other employees and that these plaintiffs, particularly those in the Clay Shop, are required to spend as much as from three to eight hours a week setting up the molds and maintaining or repairing the company's machines for which work said plaintiffs received no pay.

Plaintiffs state that employees in the Slip Room are required to work from three to five hours every Friday night cleaning said machinery, for which time said employees, including these plaintiffs, are not paid. Plaintiffs further state that employees, including plaintiff Robert Fitton and others, were required by the company foreman to punch time clocks out and then return to work to finish oiling molds and other work, which time was not recorded on time cards maintained by said company.

Plaintiffs state that they have not been compensated for the work performed in excess of the hours shown on the time cards, vouchers and payroll slips; that they have been required to perform work for said defendant, The Mt. Clemens Pottery Company, for time which is not shown on said time cards and that said plaintiffs have owing them unpaid overtime compensation; that said defendant, The Mt. Clemens Pottery Company, has not paid the plaintiffs as aforesaid the minimum wages required by said Act. That the plaintiffs are engaged in the Clay Shops, in the Dipping Departments, Decorating Rooms, Packing and Shipping Sheds, the Slip-off and other Departments of the defendant herein and includes kiln operators, decal, pattern cutters and others who load, unload, pack, handle, process, manufacture, ship and transport the products of the defendant herein for interstate commerce.

IX.

Plaintiffs further allege that they are not informed as to the exact amount of hours worked overtime by each of the said plaintiffs or the minimum wages still due and owing for hours worked as aforesaid in violation of the aforesaid Fair Labor Standards Act of 1938.

X.

Plaintiffs allege that information concerning the hours worked overtime, the unauthorized deductions from the wages made as aforesaid, and the minimum wages still owing said plaintiffs is in the exclusive possession of the defendant. That interrogatories are attached hereto which plaintiffs respectfully ask the Court to compel the defendant, The Mt. Clemens Pottery Company, to answer.

Plaintiffs are informed and so allege the fact to be that there is in excess of $40,000.00 due and owing to the employees of the defendant aforesaid for overtime rendered by said employees in violation of the Fair Labor

Standards Act of 1938 and for wages not paid in accordance with the minimum standard of wages set up in said Act.

Plaintiffs further state that by reason of the aforesaid acts of the defendant, The Mt. Clemens Pottery Company, plaintiffs are entitled to the sum of $40,000.00 and for an additional amount as liquidated damages, all as provided for in said Act.

Wherefore, Plaintiffs pray that the Court enter judgment herein in the amount of $40,000.00 and that the plaintiffs may be awarded an additional amount as liquidated damages; that the plaintiffs may have their Court costs including reasonable attorney fees for plaintiffs' counsel and that they may have such other and further relief as is just and proper in the premises; that the defendant, The Mt. Clemens Pottery Company, be ordered to answer the interrogatories herein annexed.

Edward Lamb,
Attorney for Plaintiffs,
1014 Edison Bldg., Toledo, Ohio

State of Ohio,
Lucas County—ss.

Edward Lamb, being first duly sworn, says that he is attorney of record for the plaintiffs herein who are absent from the County of Lucas and that the facts stated and allegations contained in the foregoing pleading are within his personal knowledge, and are, as he believes, true.

Edward Lamb

Sworn to before me and subscribed in my presence this 5th day of December, 1941.

Lowell Goerlich,
Notary Public, Lucas County, Ohio.
(Seal)

INTERROGATORIES

The following interrogatories are annexed to the foregoing petition to be answered by the defendant as prayed for in the petition:

First Interrogatory:

Give the names, addresses and social security numbers of all the plaintiffs herein, together with records of hours worked and wages paid to the same since October 24, 1938.

Answer:

Second Interrogatory:

Give the names and addresses of customers of said Mt. Clemens Pottery Company and furnish copies of invoices or other records showing extent and volume of sales and purchases in Ohio, Michigan and elsewhere, from October 24, 1938, to December 3, 1941.

Answer:

Third Interrogatory:

Does the Mt. Clemens Pottery Company pay said employees for the hours and minutes worked as revealed by the time cards maintained by said company?

Answer:

Fourth Interrogatory:

Does said Mt. Clemens Pottery Company keep duplicate or two sets of time records?

Answer:

Fifth Interrogatory:

Has the Mt. Clemens Pottery Company kept its wage and hour records since October 24, 1939? Has said com-

pany destroyed any such records, and if so give time and place.

Answer:

Sixth Interrogatory:

Has said Mt. Clemens Pottery Company made restitution of any unpaid minimum wages or overtime compensation, and if so, give dates persons receiving the same, and amount thereof.

Seventh Interrogatory:

Have deductions been made from the wages of any plaintiffs herein for sponges, carriers, gloves or other equipment? Give dates and amounts thereof and names of persons affected. Have plaintiffs, or any of them, been compelled to work in changing or oiling molds, maintaining machinery or doing other work for which they were not paid?

Answer:

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

No. 159790

Eric Sopha,
160 Barbara Street, Mt. Clemens, Michigan,
Alice Stoll,
136 Grand Ave., Mt. Clemens, Michigan,
Esther Klein, et al.,
187 North Gratiot, Mt. Clemens, Michigan,
Plaintiffs,

vs.

The Mt. Clemens Pottery Co.,
Rose and Church Streets,
Mt. Clemens, Michigan,
Defendant.

AFFIDAVIT IN ATTACHMENT AND TO OBTAIN ORDER OF GARNISHMENT

State of Ohio,
County of Lucas—ss.

Edward Lamb, being first duly sworn, deposes and says that he is the attorney of record for the plaintiffs in this cause and that said plaintiffs are commencing a civil action in this Court against the defendant, The Mt. Clemens Pottery Company, a foreign corporation, for the recovery of compensation for overtime worked for said defendant in the amount of $40,000.00 with interest at the rate of 6% from December 3, 1941, together with costs and attorney fees. That said claim is one for work and labor and arises upon a contract of employment. That said defendant is a foreign corporation, not exempt by law from attachment, and is not a resident of this State. That the property sought to be attached is not exempt from execution, attachment of sale to satisfy a judgment or order. That said claim be just and affiant believes plaintiffs should recover the amount of $40,000.00 with

interest at the rate of 6% from December 3, 1941, and costs and attorney fees; and that the facts set forth in this affidavit are true.

Affiant further says that he has good reasons to believe and does believe that the S. S. Kresge Company, 301 Summit Street, Toledo, Ohio, has property of the defendant, Mt. Clemens Pottery Company, in its possession consisting of money due and to become due on account of goods sold to it by said defendant and that said S. S. Kresge Company should receive notice of garnishment herein.

And also command the Sheriff to notify the said S. S. Kresge Company, 301 Summit Street, Toledo, Ohio, that it has been garnished and is required to answer herein.

Edward Lamb.

Sworn to before me and subscribed in my presence this 5th day of December, 1941.

Lowell Goerlich,
Notary Public, Lucas County, Ohio.

(Seal)

The State of Ohio,
Lucas County—ss.

I, Wm. F. Renz, Clerk of the Court of Common Pleas, within and for the County of Lucas, and State of Ohio, do hereby certify the foregoing to be true and correct copies of the Petition and Affidavit in Attachment and to Obtain Order of Garnishment, filed in my office on the 6th day of December, 1941, in the above entitled cause.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court at Toledo, Ohio, this 6th day of February, A. D. 1942.

Wm. F. Renz, Clerk.
Margaret Bruggemeier, Deputy.

[Seal]

Exhibit 112

Tr. 3489; R. 1466

Received only as part of separate record of excluded testimony. Decree of the Circuit Court for the County of Macomb, State of Michigan, in Case 12,066, Mt. Clemens Pottery Company v. United Pottery Workers, et al., enjoining various types of misconduct, such as intimidating employees, preventing access to plaintiffs' premises, etc., and limiting picketing to a group of eight men.

Original Exhibit Transmitted to Appellate Court as part of Separate Record of Excluded Testimony.

Exhibit 113

Tr. 3501; R. 1471

Inspection Field Letter No. 27 of the Wage Hour Division of the U. S. Department of Labor.

Reproduce in Full.

WAGE AND HOUR DIVISON
U. S. DEPARTMENT OF LABOR

INSPECTION FIELD LETTER No. 27
SUBJECT: Time Spent in Establishments Before or After Regular Working Hours

1. Where employees enter their places of employment a short period of time (15 or 20 minutes) before the regular starting time and do so solely for their own convenience and not because they are required or expected to do so by the employer, such periods shall not be considered time worked if the employees do not actually perform any work during the period.

2. Similarly, where employees remain at their places of employment for short periods (15 or 20 minutes) at the end of the day solely for their own convenience and not because they are required or expected to do so by the employer, such periods shall not be considered working time if the employees do not actually perform any work during the period.

3. It should be noted that an employee is engaged in work during either type of period if he prepared or handles materials, cleans machinery, or aids in any other way in the production of goods.

4. It is the duty of the inspector in all such cases to determine whether or not employees are engaged in performing work during such periods. The determination should be made on the basis of an adequate number of employee interviews together with any further investigation which is necessary to establish the facts of the situation.

Issued 6-14-40. (4772)

The foregoing is a correct copy of Inspection Field Letter No. 27 issued to the inspection staff of the Wage and Hour Division as a statement of the enforcement policy of the Division. It does not purport to be an interpretation of any provision of the Fair Labor Standards Act. The enforcement policy and the legal interpretations of the Division are not binding on the courts, of course, in judicial proceedings brought pursuant to section 16(b) of the Act or otherwise.

L. Metcalfe Walling,
Administrator, Wage & Hour Division
United States Department of Labor.

Dated at New York, N. Y.
This 27th day of
May 1942.

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL

(Filed Oct. 9, 1944)

At a session of said Court held in the Federal Building, Detroit, Michigan, on the 9th day of October, 1944.

Present: Hon. Frank A. Picard, District Judge.

On reading and filing the petition of the defendant Mt. Clemens Pottery Company for an extension of time to file the record on appeal, and on consideration thereof,

It Is Hereby Ordered that the time for filing the record on appeal in this case in the Circuit Court of Appeals shall be and the same is hereby extended to and including December 7th, 1944.

Frank A. Picard,
District Judge.

STIPULATION AS TO TRANSCRIPT AND EXHIBITS

(Filed Oct. 30, 1944)

It is hereby stipulated by and between all the parties to the above entitled cause, through their respective attorneys, as follows:

Whereas, the original typewritten transcript of testimony and the original exhibits in the above entitled cause have been filed with the Clerk of the United States Dis-

trict Court for the Eastern District of Michigan, Southern Division, for transmission to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit as a part of the record in said cause; and

Whereas, certain minor portions of the testimony and certain exhibits have not been designated for printing in full but have been in part omitted from the printed record or reproduced therein in condensed form.

It is therefore stipulated and agreed that counsel for any party may either in their briefs or in oral argument make citations either to pages of the original transcript or to original exhibits in the event that any such citation should be necessitated by reason of the omission from the printed record herein of any such transcript pages or exhibits.

Albert E. Meder,
Frank E. Cooper,
Bert V. Nunneley,
Beaumont, Smith & Harris,
Of Counsel,
Attorneys for Appellant.
By Frank E. Cooper.

Edward Lamb,
Lowell Goerlich,
Attorneys for Appellees.
By Edward Lamb.

Dated this 27th day of
October, 1944.

CERTIFICATE OF CLERK

United States of America,
Eastern District of Michigan—ss.

I, George M. Read, Clerk of the United States District Court for said District, do hereby certify that the within and foregoing pages numbered 1 to 1583 inclusive contain a full and complete copy of all papers filed and all proceedings had in said cause, in accordance with the designation of attorneys for appellant as to contents of Record on Appeal (the attorneys for appellees not having filed a designation), as the same appears on file and of record in this office; that I have caused the same to be compared with the originals, and that the within and foregoing is a true and correct transcript therefrom and of the whole thereof as designated. Pursuant to the order of the District Court and the stipulation of counsel (appearing respectively at pp. 312 and 1582 hereinabove) the original exhibits and the entire typewritten transcript of testimony are to be separately transmitted to the Circuit Court of Appeals as a part of the record in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said District, this ..... day of ....., A. D. 1944.

George M. Read, Clerk
United States District Court,
Eastern District of Michigan.

By .....
Deputy Clerk.

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(April 5, 1945—Before HICKS, HAMILTON and MARTIN, JJ.)

This cause is argued by Frank E. Cooper and Bert V. Nunneley for Appellant and by Edward Lamb for Appellees and is submitted to the Court.

JUDGMENT

(Entered May 21, 1945)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause of action is ordered dismissed.

OPINION

(Filed May 21, 1945)

Before HICKS, HAMILTON and MARTIN, Circuit Judges.

MARTIN, Circuit Judge. A local CIO union and seven of its members, suing on behalf of all similarly situated employees, brought this action against the appellant employer, charging violations of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. A., Sections 201-219) in numerous respects. Approximately 300 employees or ex-employees of appellant were permitted, by order of the district court, to sign and file designations authorizing the plaintiffs to represent them.

The appellant corporation for twenty-eight years has operated a pottery plant at Mt. Clemens, Michigan; and during the period with which we are concerned, employed some 1,000 to 1,200 individuals. The original complaint, which was filed a few days after an organizational strike had been instituted by the union at the pottery plant, charged among other things that the time clocks of the company had been so rigged or "doctored" that the figures punched on the cards failed to reflect correctly the actual time at which the card was punched. This charge was abandoned and, in lieu, the charge was made that the employer did not compute the working time of the employees, or pay them, in accordance with the time-card records. The complaint further charged that the employees were worked by the company 45 hours a week from late in October, 1938, until the action was filed. There was no proof made to support the charges of the complaint that certain employees performed home-work without compensation or that certain employees earned less than thirty cents an hour. Numerous motions were made and other preliminary steps taken, resulting in the filing by plaintiffs of two bills of particulars.

It was charged by plaintiffs that the company had credited employees with working time only from the succeeding quarter hour when an employee checked in to the preceding quarter hour when he checked out; and that under this practice the company "has deducted from the time worked, as shown on said time cards, a period of as much as 56 minutes each day."

Numerous new charges were made and dropped and numerous motions were made and acted upon which it is immaterial to detail.

The district judge finally referred the cause to a special master to hear the parties, to take testimony with respect to the issues as framed by the pleadings, and to report his findings of fact and conclusions of law.

The lengthy proceedings before the master were recorded in a typewritten transcript comprising more than 3500 pages. During the course of the procedure before the master charges not set up in the pleadings were made by the plaintiffs, including claims that office workers were not compensated in accordance with the Act, that the company had violated the child labor provisions thereof, and that company meetings were held without crediting the employees with the time spent in attendance. The master held that, in the absence of amendment of the pleadings, testimony would not be received upon such issues.

The evidence adduced before the master consisted largely of testimony of eight union employees or former employees of the company on behalf of the plaintiffs, while the testimony offered by the pottery company was primarily that of its foremen and managerial representatives. Each side introduced expert testimony as to industrial customs and practices; and an inspector of the Wage and Hour Division of the United States Department of Labor testified for the plaintiffs.

The special master reported that the employees involved in the case were engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act; that the plaintiffs were not estopped to maintain the action by reason of acquiescence for a long time in the practices of the company with respect to the computation of time; that the prior inspection of the plant by the Wage and Hour Division was irrelevant upon the issues in suit; and that the defense of lack of authority of the union to sue was invalid. He recognized that employees subject to the provisions of the Fair Labor Standards Act are entitled to receive full payment for the time they have worked in excess of its limited statutory period

at a rate not less than time and one-half for the extra time worked.

The master stated that, while legal questions as to what constitutes working time were involved, the principle issue is factual. He found that the pottery company employs an average of approximately 1200 persons in ten or twelve departments, of which only four, the clay shop, brushing and dipping, glost belt and decorating departments, were directly represented by the witnesses who had testified for the plaintiffs. He found further that more than 95% of the employees in the plant, who are engaged in production work, are compensated upon a piece work basis; that the rate of pay is generally based upon the output of a group or a crew, but in departments where employees work individually the rate is based upon the output of the individual; and that the pottery company operates generally on a five-day week, the departments variously operating from one to three shifts per day; with shifts in the different departments beginning at different times during the morning, although the established starting time was always on an even quarter hour. The bisque and glost kiln departments operated on a three-shift seven-day basis.

The pottery plant covers more than eight acres of ground, the employees' entrance being at the northeast corner immediately adjacent to which are cloak and toilet rooms for men and women. Upon entering the production part of the plant, an employee must pass and punch a time clock. There were two time clocks placed at different locations in the plant, a third one having been added shortly before the commencement of this action. In checking in and out at the clocks, the employee removes his card from the rack, places it in a slot, pushes down a hand lever, and removes the card with the time recorded on it. He then places the card in another rack. An average of 25 employees a minute can check in and out in this manner. After punching the time clock, the employees proceed by somewhat defined aisles to their particular places of work. The distance from the time clock to the place of work varies from 130 to 325 feet in the glost kilns to 820 or 890 feet in the mold department.

Opinion

The master found further that the time clock system was first installed by the company in 1933; and that employees are not permitted to punch their cards more than fourteen minutes prior to the time which the company designates as starting time. For computation of time worked by the employees, the time cards are removed from the racks and the time is calculated from the succeeding even quarter hour after employees ring in, to the quarter hour immediately preceding the time when they punch out. For example, an employee whose card is punched in at 6:46 A. M., punched out at 12:03 P. M., punched in at 12:50 P. M., and punched out again at 4:07 P. M., is credited with 8 hours' working time. The resultant figure is entered on the card in the righthand column and the card is returned to the rack. In computing overtime pay under the Fair Labor Standards Act the method employed by the company is to divide the gross pay received by the employee in each work week by the number of hours credited to him, and the resultant average hourly rate is multiplied by time and half for the overtime hours. This method conforms to the system prescribed by the Wage and Hour Division of the Department of Labor.

Because the shifts in the different departments commenced at different times in the morning, no whistle signalized the commencement of work on most shifts, but clocks belonging to the company or to employees were distributed freely throughout the plant. Whistles were blown, however, at 6:55 and 7:00 A. M., as the most commonly established starting time in the morning. Whistles were also blown at several other times during the day.

The policy of the company, put into effect through the operation of the Fair Labor Standards Act, was to keep the working hours of its employees below the statutory limitation for payment of straight time as far as possible. Before the passage of the Act, the company had been officially on a forty-five hour week, but lay-offs during that period had reduced the working hours of employees to less than forty-five.

The matter of compliance with the Act was frequently discussed at weekly meetings of foremen; and employees were informed of the policy adopted by the company and were instructed, when possible, to keep their hours below the statutory period.

Practically all the workmen in the plant had certain preliminary duties to perform, after arriving at their respective departments and before commencing production work, such as putting on their aprons or overalls, removing their shirts, taping or greasing their arms and putting on finger cots, and preparing equipment for commencement of production work by turning on switches for lights and machinery, opening windows and assembling and sharpening tools. The nature of this work varied from department to department, and from job to job within the department.

The master reviewed at length the evidence introduced with respect to the working time of the employees. It was pointed out that the foremen had testified that the employees were not instructed to report for work at fourteen minutes to starting time, but rather at such time as to be in their respective departments ready for work at the even quarter hour set for the start of the shift, and that they could ring in at any time after "14 to." They testified further that production work was not commenced until the established starting time, except in rare instances where employees may have "jumped the gun" a minute or two, and that frequently, where a crew had to be assembled, work was not commenced until considerably after starting time. It was conceded that in order for employees to be in their departments ready for work by starting time, it was necessary for them to punch the time clocks some minutes before starting time. The time consumed by the employees in walking from time clocks to the departments was not treated by the company as working time. None of the estimates of the time consumed by employees in reaching their departments, ranging from one and one-half to three minutes, was based upon actual clocking of the time in transit.

The testimony was conflicting concerning the extent of

the personal activities of the employees prior to commencing work. Witnesses for the company testified that most of an employee's time, after he had arrived in a department in advance of regular starting time, was spent in conversation or personal activities not connected with his work. The master stated in his report that there was practically no direct testimony by the witnesses for the plaintiffs as to their procedure when going out for lunch, returning therefrom and when leaving at the end of a shift; but that, on cross-examination, several had admitted that they did not work fourteen minutes beyond quitting time, but on the contrary frequently stopped production and cleaned up before quitting time. Such testimony was in line with that of the foremen. The time card exhibits reveal that the employees came in at practically uniform rate during the first seven minutes that the clocks were open, and that by five minutes to 7:00 o'clock 95% of the employees had rung in. In three of the four departments concerning which testimony was offered, employees worked in groups; and production work could not be commenced until the entire group had arrived.

The master found that the proof demonstrated that no practice existed of working the employees of the pottery company fourteen minutes after quitting time for lunch or at the end of a shift. More difficulty was found in passing upon the claims of the plaintiffs that all time between punched entries on the cards was working time. In appraising the evidence, both direct and circumstantial, the master concluded that the plaintiffs had not carried the burden of proof on the issue.

The master rationalized upon the proven facts and circumstances in arriving at this conclusion. He did so upon a consideration of pertinent authorities. He stated that a computation of overtime on the basis of a finding that the employees worked more than the time credited to them, but less than the time shown by the entries on the cards would, on the record in the case, be speculative, inasmuch as the witnesses for the plaintiffs had kept no record of their time and admitted that, apart from the time clock cards, they could not tell on any particular

day when they arrived at their departments or commenced preliminary work. The time consumed in preliminary activities varied in each department and in the same department on different days.

The master found that the evidence did not bear out that women employees were paid sub-minimum wages. He found no violation of the Wage and Hour Act in respect of deductions for tools or for the "invisible man." The claim of employees as to "charity work" was not found on the facts to be in violation of the Act.

The general conclusion reached by the master, based upon the evidence and applicable law, was that the plaintiffs had not established by a fair preponderance of evidence a violation of the Fair Labor Standards Act by the employer. Accordingly, he recommended that the complaint be dismissed. We have not deemed it essential to rewrite from the master's report, which embraces seventy-four printed pages of the record, his discussion of the evidence in the case; but, from careful examination, we find that the master's findings of fact were all supported by substantial evidence contained in the voluminous record and are not clearly erroneous.

Notwithstanding the findings of the special master, which were adopted by the district court except as hereinafter specified, the court applied an arbitrary formula, set up in its labeled "Findings of Fact," as follows:

"2. The Court finds that some of the plaintiffs started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period. Plaintiffs are not entitled to pay from the minute they punched the time clock; but in computing their hours of work there should be allowed 5 minutes for punching the clock plus an additional 2 minutes to go from the clock to their place of employment, or a total of 7 minutes, before the beginning of work in the morning. There should be allowed a total of 5 minutes at the resumption of work after the lunch period.

"3. In computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there should be included in addition to the hours of work as computed by the company the following:

"(a) In cases where an employee punched his time clock card more than 7 minutes before his regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 7 minutes before the regular starting time.

"(b) In cases where an employee punched his time clock card more than 5 minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 5 minutes before the regular starting time."

The district court concluded as a matter of law that the "plaintiffs have established that work was done by some of them which the Company did not give them credit for, and the computation thereof, on the basis above stated, forms a basis for recovery of overtime pay." Judgment was entered in favor of the employees on the basis of this formula, an equal amount was added thereto as liquidated damages; and the plaintiffs were allowed, as costs to be taxed against the appellant, $2,000 as fee compensation to their attorneys. The compensation of the special master was taxed to the appellant company.

The judgment of the district court must be reversed. There was abundant substantial evidence to support the findings of the special master and it could not appropriately be said that such findings are clearly erroneous. Civil Procedure Rule 53(e)2 distinctly provides that "in an action to be tried without a jury the court shall accept the Master's findings of fact unless clearly erroneous."

The district court is as much obliged to accept the findings of a master, unless clearly erroneous, as this court is to accept the findings of the district court unless clearly erroneous. See *Santa Cruz Oil Corporation* v. *Allbright-Nell Co.*, 115 F. (2d) 604, 607 (C. C. A. 7). Cf. *Morris Plan Industrial Bank* v. *Henderson*, 131 F. (2d) 975, 976 (C. C. A. 2).

Rule 52(e)2, as well as Rule 52(a) which binds this court to accept the findings of the district judge, unless clearly erroneous, is based on the same principle, long recognized in law, that the master or judge who person-

ally observes the witnesses is in better position to pass upon conflicting testimony and the credibility of witnesses than is a tribunal which has neither seen nor heard the witnesses.

Moreover, the arbitrary formula applied by the district judge, in lieu of acceptance of the master's findings, produced a judgment based upon surmise and conjecture, which cannot be sustained. See *Townsend* v. *New York Cent. R. Co.*, 141 F. (2d) 483 (C. C. A. 7).

The Fair Labor Standards Act is of course applicable to employees compensated on a piece rate basis. *United States* v. *Rosenwasser*, 323 U. S. 360. But the burden rested on each of the plaintiffs here to prove by a preponderance of the evidence that he did not receive the wages that he was entitled to receive under the Fair Labor Standards Act, and to show by evidence, not resting upon conjecture, the extent of overtime worked. It does not suffice for the employee to base his right to recovery on a mere estimated average of overtime worked. To uphold a judgment based on such uncertain and conjectural evidence would be to rest it upon speculation. *Jax Beer Co.* v. *Redfern*, 124 F. (2d) 172, 175 (C. C. A. 5). See also *Tennessee Coal, Iron & Railroad Co. et al.* v. *Muscoda Local No. 123 et al.*, 135 F. (2d) 320 (C. C. A. 5); *Epps* v. *Weathers*, 49 F. Supp. 2 (D. C. Ga.).

In *Tennessee Coal, Iron & Railroad Co. et al.* v. *Muscoda Local No. 123, et al.*, 321 U. S. 590, 593, the judgment of the Fifth Circuit Court of Appeals, in the same case cited supra, was affirmed, to the effect that iron ore miners were at work, within the meaning of the Fair Labor Standards Act, while engaged in underground travel which they were obliged to perform on the property of and under the direction of their employers as a necessary concomitant of their employment. It should be observed, however, that the Circuit Court of Appeals, whose judgment was affirmed, had also held that with respect to time spent by the employees in checking in and out and procuring and returning tools, lamps and carbide, no overtime was allowable. The Court of Appeals, in its opinion, said: "In addition to the practical difficulties

incident to the computation of isolated moments so elusive in character, we think these pursuits should not be computed as work-time, since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment." 135 F. (2d) 320, 323, *supra*.

It seems appropriate to quote the language of Mr. Justice Jackson, writing the unanimous opinion of the Supreme Court in *Skidmore* v. *Swift & Co.*, 323 U. S. 134: "We have not attempted to, and we cannot, lay down a legal formula to resolve cases so varied in their facts as are the many situations in which employment involves waiting time. Whether in a concrete case such time falls within or without the Act is a question of fact to be resolved by appropriate findings of the trial court."

The crucial question of fact in the instant case had been resolved against the appellees, upon substantial evidence, by a special master to whom the district judge had referred the cause. The fact findings of the master were certainly not clearly erroneous. Wherefore, the district judge should have upheld the master's findings and should have based his judgment thereon. This he failed to do; but, instead, supplied an arbitrary formula not derivable from substantial evidence of record.

Accordingly, the judgment of the district court is reversed and the cause of action is ordered dismissed.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of Record and Proceedings in the case of *Mt. Clemens Pottery Company* v. *Steve Anderson, et al.*, No. 9924, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 5th day of July, A. D. 1945.

J. W. Menzies,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 15, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.